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Federal Register

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7493 of November 5, 2001

National Adoption Month, 2001

By the President of the United States of America

A Proclamation

Children deserve to be raised in loving families with parents who protect and nurture them. For some children, adoption is their best chance for a healthy and happy life. Each year, American families adopt approximately 120,000 newborn or older children, providing them with a loving and supportive environment.

Despite this substantial number of annual adoptions, more than 134,000 children are currently waiting adoption. While our foster care system can provide a safe, temporary home for these children, adoption would give them the love and stability of a permanent family that would better enable them to develop to their full potential.

My Administration is working to help states promote and support adoptions. This year, 35 states and the District of Columbia received adoption incentive awards for increasing the number of children they placed from foster care into permanent homes. States have reinvested these bonuses to enhance their adoption and child welfare programs, which has resulted in an unprecedented 79 percent increase in adoptions from 28,000 in 1996 to 50,000 in 2000.

Although we have made dramatic advances in encouraging adoption, we must strengthen our efforts to find a safe, loving, and permanent home for every child awaiting one. One important way to advance towards this goal is to ease the financial burden on families that adopt children. The tax relief bill that I signed into law earlier this year extends and increases the adoption tax credit for qualified expenses from $5,000 to $10,000 per child. The new law also increases the tax credit for adoptive parents of children with special needs from $6,000 to $10,000 per child, regardless of expenses. Parents who adopt children with special needs will benefit from this meaningful tax credit because it will help cover unique adoption costs.

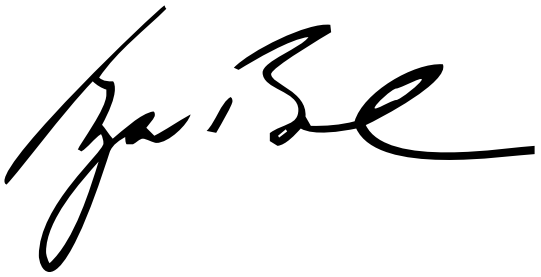
Ensuring the provision of post-adoptive services also plays an important role in facilitating successful adoptions. I support the Promoting Safe and Stable Families proposal, currently before the Congress, which would improve post- adoptive services by prioritizing research and evaluation for these services and establishing systems to ensure that they are available to meet the needs of adoptive families. In addition, this proposal provides for education and training vouchers to children adopted after the age of 15.

Adoptive parents have a special calling—sharing a loving home with children in need, offering them hope for a brighter future. Federal, state, and local governments must continue supporting these quiet heroes as they make the considerable sacrifices and receive the countless blessings of parenthood that come from providing a child with the chance of a lifetime—an upbringing in a happy and healthy home.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001, as

National Adoption Month. I call on all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28210
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Billing code 3195–01–P

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 99–081–1]

Hot Water Treatment for Limes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, to allow limes that are found to be infested with mealybugs (Pseudococcidae) and other surface pests to be treated with a hot water treatment. This action will provide an additional option for treating imported limes for mealybugs and other surface pests at the port of arrival.

DATES: This rule will be effective on January 7, 2002 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 10, 2001. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of January 7, 2002.

ADDRESSES: Please send four copies (an original and three copies) of your comments or notice of intent to submit adverse comments to: Docket No. 99–081–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.
Please state that your comment refers to Docket No. 99–081–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into the United States, the Animal and Plant Health Inspection Service (APHIS) restricts the importation of many articles, including fruits. As a condition of importation, all fruits are subject to inspection at the port of arrival and, if necessary, treated for plant pests, in accordance with our regulations in 7 CFR chapter III. The Plant Protection and Quarantine (PPQ) Treatment Manual contains approved treatment schedules and is incorporated by reference into the regulations at 7 CFR 300.1.

The PPQ Treatment Manual currently provides that limes that are found to be infested with mealybugs (Pseudococcidae) or other surface pests upon arrival in the United States must be treated with methyl bromide to destroy the mealybugs and other surface pests. In keeping with our commitment to working toward the development of commodity treatment alternatives to methyl bromide, we have determined that the following hot water treatment can be used as an effective treatment method for limes infested with mealybugs and other surface pests:

- The limes must be treated under the supervision of an APHIS inspector;
- The limes must be treated in a certified hot water immersion treatment tank and must be submerged at least 4 inches below the water's surface;
- The water must circulate continually and be kept at 120.2 °F or above for 20 minutes;
- The treatment time begins when the water temperature reaches at least 120.2 °F in all locations of the tank; and
- Cooling and waxing the limes are optional and are the sole responsibility of the processor.

Research conducted by the Department's Agricultural Research Service has shown that hot water treatment will destroy all mealybugs and other surface pests. Therefore, we are adding the hot water treatment described above to the PPQ Treatment Manual and are updating the PPQ Treatment Manual's incorporation by reference at 7 CFR 300.1 to reflect the date of this treatment's inclusion in the manual.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, to allow imported limes that are found to be infested with mealybugs (Pseudococcidae) and other surface pests to be treated with a hot water treatment. This action will provide an alternative to treating infested limes with methyl bromide.

Methyl bromide may still be used as a treatment method. It costs about $18.40 to fumigate a ton of limes with methyl bromide. Hot water treatment will cost about $9.10 per ton, taking into account labor and fuel costs. Hot water treatment will also take less time than methyl bromide fumigation. A hot water treatment tank fitted with 4 bins has a capacity to treat about 8 tons per hour. Depending on the amount of limes to be treated and the capacity of the treatment facility, it typically takes approximately 2 hours to fumigate limes with methyl bromide.

This rule does not require the use of hot water treatment for infested limes; rather, it establishes hot water treatment as an alternative to methyl bromide fumigation. The hot water treatment provided for by this rule may lower treatment costs for lime importers who choose it over methyl bromide fumigation, but we do not expect that its availability will have any substantial economic effects on any entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* In accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Office of the Federal Register has approved, for incorporation by reference in 7 CFR chapter III, the Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and all revisions through May 2000; and Treatments T101–n–2, T102–b, and T102–e, and Table 5–2–5, revised July 2001.

* * * * *

Done in Washington, DC, this 2nd day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–28065 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–092–1]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations to include additional quarantined areas in Illinois and New York. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule was effective November 2, 2001. We invite you to comment on this docket. We will consider all comments we receive that are postmarked by January 7, 2002.

ADDRESSES: Please send your comment and three copies to: Docket No. 01–092–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–092–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Emergency Programs Coordinator, Surveillance and Emergency Programs Planning and Coordination Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After

emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

The Asian longhorned beetle regulation (7 CFR 301.51–1 through 301.51–9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of the State of Illinois and portions of New York City and Nassau and Suffolk Counties in the State of New York are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the quarantined areas in Cook and DuPage Counties, IL, and in New York City, NY. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Illinois and New York are conducting an intensive survey and eradication program in the infested areas. Both Illinois and New York have quarantined the infested areas and are restricting the intrastate movement of regulated articles from the quarantined areas to prevent the spread of ALB within those States. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51–3(c) to include additional quarantined areas in Cook and DuPage Counties, IL, and in New York City, NY. The additional quarantined areas are described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of ALB into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive that are postmarked within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this ongoing program. The environmental assessment provides a basis for our conclusion that the Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine fax service at (301) 734–3560 and requesting document number 0023. The documents may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.51–3, paragraph (c) is amended as follows:

a. Under the heading **Illinois**, by revising the first paragraph in the entry for Cook County and by adding, in alphabetical order, a new entry for Cook and DuPage Counties.

b. Under the heading **New York**, by revising the entry for New York City.

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

Cook County. That area in the Ravenswood community in the city of Chicago that is bounded as follows: Beginning on the shoreline of Lake Michigan at Howard Street; then west on Howard Street to Western Avenue; then south on Western Avenue to Bryn Mawr Avenue; then west on Bryn Mawr Avenue to Central Park Avenue; then south on Central Park Avenue to Diversey Avenue; then east on Diversey Avenue to the shoreline of Lake Michigan; then north along the shoreline of Lake Michigan to the point of beginning.

* * * * *

Cook and DuPage Counties. That area in Cook and DuPage Counties that is bounded as follows: Beginning at the intersection of Supreme Drive and Thomas Drive in the Village of Bensenville; then south on Thomas Drive to its end; then on a line southwest from the end of Thomas Drive to Church Road; then south on Church Road to Jefferson Street; then east on Jefferson Street to the Redmond Recreational Complex property line; then south and east along the Redmond Recreational Complex property line to John Street; then north on John Street to Jefferson Street; then east on Jefferson Street to County Line Road; then continuing east on an imaginary line from the intersection of Jefferson Street and County Line Road through the Chicago, Milwaukee, St. Paul and Pacific Railroad Yards to the intersection of Waveland Avenue and Centrella Street in the Village of Franklin Park; then east on Waveland Avenue to Mannheim Road (State Route 12); then north on Mannheim Road to Interstate 190; then west on Interstate 190 to Bessie Coleman Drive; then north on Bessie Coleman Drive to a point in line with Runway 27 Right on the grounds of O'Hare International Airport; then west along an imaginary line from Bessie Coleman Drive following the line of Runway 27 Right across the grounds of O'Hare International Airport to North York Road; then north on North York Road to Supreme Drive; then west on Supreme Drive to the point of beginning.

* * * * *

New York

New York City. That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then west and north along the shoreline of the Hudson River to Martin Luther King Jr. Boulevard; then east on Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Ward's Island; then east and south along the shoreline of Randall's and Ward's Island to its intersection with the Triborough Bridge; then east along the Triborough Bridge to its intersection with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with Grand Central Parkway; then west on Grand Central Parkway to Jackie Robinson Parkway; then west on Jackie Robinson Parkway to Woodhaven Boulevard; then south on Woodhaven Boulevard to Atlantic Avenue; then west on Atlantic Avenue to the Eastern Parkway Extension; then south and west along the Eastern Parkway Extension and Eastern Parkway to Grand Army Plaza; then west along the south side of Grand Army Plaza to Union Street; then west on Union Street to Van Brunt Street; then south on Van Brunt Street to Hamilton Avenue and the Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Brooklyn Battery Tunnel to the East River; then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.

* * * * *

Done in Washington, DC, this 2nd day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–28068 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D 01–81]

Customs Preclearance in Foreign Countries

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect that Customs has added two new preclearance facilities and to provide that the Customs officer exercising supervisory control over all of the preclearance facilities will be located at Customs Headquarters.

EFFECTIVE DATE: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Field Operations, 202–927–2301.

SUPPLEMENTARY INFORMATION:

Background

Customs preclearance operations have been in existence since 1952. There are presently 11 preclearance facilities operating in both Canada and the Caribbean. Each facility is responsible for preclearing U.S. bound passengers and their personal effects and baggage. In most cases, U.S. bound passengers who are precleared in either Canada or the Caribbean are permitted to arrive at a U.S. domestic facility and either directly connect to a U.S. domestic flight or leave the airport. Preclearance facilities primarily serve to facilitate low risk passengers and to relieve passenger congestion at federal inspection facilities in the United States. In fiscal year 2000, 12.5 million passengers were precleared. This figure represents 15% of all commercial air passengers cleared by Customs.

Section 101.5, Customs Regulations (19 CFR 101.5), sets forth a list of Customs preclearance offices in foreign countries and of the Customs officers under whose supervision the preclearance offices function.

The Customs Regulations reflect that there are 9 preclearance offices. This document amends § 101.5, Customs

Regulations, to add to the list of preclearance offices one at Orangestad, Aruba and one at Ottawa, Canada. Section 101.5 is also amended to reflect that all preclearance operations are being consolidated under a single Director, Preclearance, located in the Office of Field Operations at Customs Headquarters.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely reflects the addition of two new Customs preclearance offices and the consolidation of the Customs preclearance operations under a Director, Preclearance, located in the Office of Field Operations at Customs Headquarters, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Foreign trade statistics, Imports, Organization and functions (Government agencies), Shipments, Vessels.

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101, Customs Regulations, continues to read, and a new specific authority citation for § 101.5 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

Section 101.5 also issued under 19 U.S.C. 1629.

* * * * *

2. Section 101.5 is revised to read as follows:

§ 101.5 Customs preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where U. S. Customs officers are located. A Director, Preclearance, located in the Office of Field Operations at Customs Headquarters, is the responsible Customs officer exercising supervisory control over all preclearance offices.

Country	Customs office
Aruba	Orangestad
The Bahamas	Freeport
	Nassau
Bermuda	Kindley Field
Canada	Calgary, Alberta
	Edmonton, Alberta
	Montreal, Quebec
	Ottawa, Ontario
	Toronto, Ontario
	Vancouver, British Columbia
	Winnipeg, Manitoba

Approved: November 2, 2001.

Charles W. Winwood,

Acting Commissioner of Customs.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–28013 Filed 11–7–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 337

Supplemental Regulations Governing Federal Housing Administration Debentures

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury amends the Supplemental Regulations Governing Federal Housing Administration (FHA) Debentures by requiring debentures to be forwarded to the Bureau of the Public Debt for processing. The FHA debentures, issued under the National Housing Act as amended, were previously submitted to the Federal Reserve Bank of Philadelphia. This amendment reflects that the Bureau of the Public Debt, Office of Public Debt Accounting, will perform day-to-day operations and transactions relating to the debentures.

DATES: This rule is effective October 29, 2001.

ADDRESSES: You can download this final rule at the following World Wide Web address: <http://www.publicdebt.treas.gov>. You may also inspect and copy this rule at: Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW, Washington, D.C. 20220. Before visiting the library, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT:

- Howard Stevens, Office of Public Debt Accounting, Bureau of the Public Debt, at (304) 480–5297 or hstevens@bpd.treas.gov
- Elizabeth Gracia, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8687 or *lgracia@bpd.treas.gov*
- Edward Gronseth, Office of Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or egronset@bpd.treas.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury is the fiscal agent for the Department of Housing and Urban Development for transactions in debentures that have been issued under the National Housing Act, 12 U.S.C. 1701 *et seq.*, as amended. Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform any necessary acts under this part. In final rule, 59 FR 42161, Aug. 17, 1994, this part was revised to consolidate the processing of debentures in certificated and book-entry forms at the Federal Reserve Bank of Philadelphia. This final rule amends 31 CFR part 337 to provide that the Bureau of the Public Debt, Office of Public Debt Accounting, will perform transactions relating to the debentures effective October 29, 2001.

II. Procedural Requirements

A. Executive Order 12866

This final rule is not a ''significant regulatory action'' as defined in Executive Order 12866 and is not a major rule under 5 U.S.C. 804. Therefore, an assessment of anticipated benefits, costs, and regulatory alternatives is not required.

B. Regulatory Flexibility Act

A prior notice of proposed rulemaking is unnecessary and impracticable because the final rule makes a minor change to the procedures for processing debentures. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

C. Paperwork Reduction Act

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 337

Banks, Banking, Government Securities, Federal Reserve System, Housing.

For the reasons set forth in the preamble, amend 31 CFR part 337 as follows:

PART 337—SUPPLEMENTAL REGULATIONS GOVERNING FEDERAL HOUSING ADMINISTRATION DEBENTURES

1. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Sec. 516, Pub. L. 102–550, 106 Stat. 3790.

2. Revise § 337.0 to read as follows:

§ 337.0 Scope of regulations.

The United States Department of the Treasury is the agent of the Federal Housing Administration for transactions in any debentures which have been or may be issued pursuant to the authority conferred by the National Housing Act, 12 U.S.C. 1701 *et seq.*, as amended from time to time, including Mutual Mortgage Insurance Fund Debentures, Housing Insurance Fund Debentures, War Housing Insurance Fund Debentures, Military Housing Insurance Fund Debentures, and National Defense Housing Insurance Fund Debentures. In accordance with the regulations adopted by the Federal Housing Commissioner and approved by the Secretary of the Treasury, such transactions are governed by regulations of the Department of the Treasury, so far as applicable. The Bureau of the Public Debt, Office of Public Debt Accounting operates the FHA debenture computer system and performs the day-to-day operations and transactions relating to the debentures.

3. Revise § 337.2 to read as follows:

§ 337.2 Transportation charges and risks.

Debentures presented for redemption at call or maturity, or for authorized prior purchase, or for conversion to book-entry form, must be delivered at the expense and risk of the holder. Debentures bearing restricted assignments may be forwarded by registered mail, but for the owner's protection debentures bearing unrestricted assignments should be forwarded by insured registered mail.

4. Amend § 337.4 by revising paragraph (a) to read as follows:

§ 337.4 Presentation and surrender.

(a) *For redemption.* To facilitate the redemption of called or maturing debentures, they may be presented and surrendered in the manner prescribed in this section in advance of the call or maturity date, as the case may be. Early presentation by holders will insure prompt payment of principal and interest when due. The debentures must first be assigned by the registered payee or his assignee, or by his duly constituted representative, if required, in the form and manner indicated in § 337.5, and must then be submitted to the Bureau of the Public Debt at the address given in § 337.14, accompanied by appropriate written advice. A transmittal advice for this purpose will accompany the notice of call.

* * * * *

5. Revise § 337.14 to read as follows:

§ 337.14 Address for further information.

Further information regarding the issuance of, transactions in, and redemption of, FHA debentures may be obtained from the Bureau of the Public Debt, Office of Public Debt Accounting, 200 Third Street, P.O. Box 396, Parkersburg, West Virginia 26102–0396.

6. Revise § 337.15 to read as follows:

§ 337.15 General Provisions.

As fiscal agents of the United States, Federal Reserve Banks are authorized to perform any necessary acts under this part. The Secretary of the Treasury may at any time or from time to time prescribe supplemental and amendatory regulations governing the matters covered by this part, notice of which shall be communicated promptly to the registered owners of the debentures.

Dated: November 1, 2001.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 01–28209 Filed 11–6–01; 2:23 pm]

BILLING CODE 4810–39–P

POSTAL SERVICE

39 CFR Part 111

Refunds and Exchanges for Metered Postage

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the *Domestic Mail Manual* (DMM) P014, Refunds and Exchanges, to clarify the refund policy for metered postage. These changes are being made in conjunction with the final rule amending P030, Postage Meters (Postage Evidencing Systems).

DATES: This rule is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, (703) 292–3590, or facsimile, (703) 292–4073.

SUPPLEMENTARY INFORMATION: The proposed rule to revise the current DMM P014, Refunds and Exchanges, was published in the **Federal Register** August 15, 2001, (66 FR 42817). The Postal Service requested that comments on the proposed rule be submitted by September 14, 2001. The date for receipt of comments was extended to September 25, 2001. The Postal Service received two written comments from postage evidencing system providers and one comment from a governmental organization. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule. The Postal Service's evaluation of the significant comments follows. The final rule, as amended, follows the discussion of the comments.

Discussion of Comments

1. *Time limit on refunds.* Two commenters expressed concern that only allowing 30 days from the date printed in indicia for users to obtain a refund for unused indicia printed on unmailed envelopes, wrappers, or labels would increase administrative burdens on both the Postal Service and users. Both commenters requested an extension of this time period to 90 days.

The Postal Service carefully considered this requirement and agrees to extend the time period to 60 days for unused indicia printed by all types of postage evidencing systems, except for PC Postage (TM) systems. The time limit for PC Postage systems will remain 30 days.

2. *Damaged postage evidencing systems.* One commenter noted that although the procedures for reconstructing the register values for a refund or transfer of unused postage appear to be limited to systems damaged by fire, there are many other ways in which a system could become damaged.

The Postal Service agrees with the commenter and changed the regulation in response to this comment. The Postal Service also clarified that the unused postage value remaining in a postage evidencing system checked out and withdrawn from service may be refunded only in certain circumstances and only with the proper supporting documentation, as described in the revised regulation.

3. *Refund of unused postage value remaining in a postage evidencing*

system. Two commenters asked that an option be added to allow the transfer of the unused postage to the appropriate postage payment account for withdrawn postage evidencing systems.

The Postal Service agrees with the commenters and changed the regulation by adding this option to reflect current practice.

4. *Examinations.*

(a) One commenter asked that the required examination of a postage evidencing system to verify the refund amount for unused postage value remaining in a postage evidencing system be waived if there is no question of system accuracy.

The Postal Service requires examination of all postage evidencing systems to verify the amount before any remaining funds are cleared from the meter. Either a refund or credit is initiated for unused postage value remaining in a postage evidencing system or additional money is collected to pay for postage value used, based on what is found. The Postal Service made no change to the regulation in response to this comment.

(b) One commenter asked that the Postal Service specify alternatives on how to perform the required examinations to verify the refund amount for unused postage value remaining in a postage evidencing system.

The *Domestic Mail Manual* (DMM) regulates customer use of postal services. Regulations affecting providers of postage evidencing systems are found in Title 39, Code of Federal Regulations (CFR) part 501, *Authorization to Manufacture and Distribute Postage Meters.* The Postal Service will publish proposed revisions to this part to include policies and regulations pertaining to more secure postage evidencing systems, such as those that use a PSD, those that generate IBI, and PC Postage systems, in a future issue of the **Federal Register**.

5. *Refund indicia.* One commenter asked that instead of requiring the user to print a refund indicia, the provider should be allowed to calculate the refund due for a PC Postage system if the provider has a Postal Service-approved method for doing so.

The Postal Service carefully considered the request and makes no change to the regulation at this time.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For reasons stated in the preamble, the Postal Service is amending 39 CFR part 111 as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

1.0 STAMP EXCHANGES

* * * * *

1.7 Stamps Converted to Other Postage Forms

[Revise 1.7 to read as follows:]

A customer may submit postage stamps for conversion to an advance deposit for permit imprint mailings, subject to these conditions:

a. Only full panes of postage stamps (or coils of stamps in the original sealed wrappers) are accepted for conversion. Accepted stamps include commemorative stamps issued no more than 1 year before the requested conversion date or regular stamp issues not officially withdrawn from sale.

b. A request for stamp conversions must be made in writing to the district manager of Customer Service and Sales in the district where the customer's post office is located. The customer's request must include:

(1) Name, denomination, quantity, and value of stamps for which conversion is requested.

* * * * *

c. The amount of postage applied to a permit imprint advance deposit account through conversion is the full face value of the stamps.

* * * * *

e. No part of any amount applied to a permit imprint advance deposit account from the conversion of postage stamps is later refundable in cash or by any other means.

* * * * *

2.0 POSTAGE AND FEES REFUNDS

2.1 Refund Standards

* * * * *

[Revise item b to read as follows:]

b. 3.0 for refund requests for postage evidencing systems and metered postage. Metered postage is printed by a postage evidencing system (P030). Refunds may be requested for unused indicia, unused postage value remaining in a postage evidencing system, and the unused balance in a postage payment account.

* * * * *

[Revise heading and text of 2.5 to read as follows:]

2.5 Refunds for Metered Postage

A refund for complete, legible, and valid, unused indicia printed on unmailed envelopes, wrappers, or labels is made under 3.2 when they are submitted by the licensee within 60 days from the dates shown on the indicia except for indicia produced by PC Postage (TM) systems. For PC Postage systems, the unused indicia must be submitted within 30 days from the dates shown in the indicia. For all indicia, except those produced by a PC Postage system, the licensee submits the indicia to the licensing post office and the USPS processes the refund. USPS charges 10% of the face value of the indicia if the total is $250 or less. If the total face value is more than $250, the charge is $10 per hour for the actual hours to process the refund; the minimum charge is $25. The licensee submits indicia produced by a PC Postage system to the system provider for refund processing. The provider may charge for processing refund requests.

* * * * *

2.8 Applying for Refund

[Revise 2.8 to read as follows:]

Except for refunds for metered postage under 2.5, the customer must apply for a refund on Form 3533; submit it to the postmaster; and provide the envelope, wrapper, or a part of it showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid for which the refund is requested.

2.9 Ruling on Refund Request

[Revise 2.9 to read as follows:]

Refunds are decided as follows:

a. Metered postage, except for PC Postage systems. The postmaster at the licensing post office grants or denies requests for refunds for metered postage under 3.2.a. The licensee may appeal adverse decisions through the manager of Postage Technology Management, USPS Headquarters (G043).

b. PC Postage systems. The system provider grants or denies requests for refunds for indicia printed by PC Postage systems under 3.2.b, using established USPS criteria. The licensee may appeal adverse decisions through

the manager of Postage Technology Management, USPS Headquarters.

c. Optional Procedure (OP) mailing. A mailer's request for a refund for an Optional Procedure (OP) mailing must be submitted to the RCSC manager.

d. All other postage. The local postmaster grants or denies all other requests for refunds under 2.0. The customer may appeal adverse decisions through the postmaster to the RCSC.

* * * * *

[Revise headings and text of 3.0 to read as follows:]

3.0 REFUND REQUEST FOR POSTAGE EVIDENCING SYSTEMS AND METERED POSTAGE

3.1 Unused Postage Value in Postage Evidencing Systems

The unused postage value remaining in a postage evidencing system checked out and withdrawn from service may be refunded depending upon the circumstance and USPS ability to make a responsible determination of the actual or approximate amount of the unused postage value. If the postage evidencing system is withdrawn for faulty operation that is not the fault of the licensee, a final postage adjustment or refund will be withheld pending the system provider's report of the cause to the USPS and the USPS determination of whether or not a refund is appropriate, and if so, the amount of the refund. If the postage evidencing system is damaged by fire, flood, etc. postage may be refunded or transferred only if the registers are legible or the register values can be reconstructed by the system provider based on adequate supporting documentation, there is proof of denial of the licensee's insurance claim in cases where the loss was insured against, and the licensee provides a statement on the cause of the damage. Refunds for specific postage evidencing systems are handled as follows:

a. For a manually reset meter being checked out and withdrawn from service, unused postage value may be transferred to another of the licensee's meters licensed at the same post office, or the licensee may request a refund. The USPS must examine a manually reset meter and verify the amount before any remaining funds are cleared from the meter and a refund or credit is initiated for unused postage value, or additional money is collected to pay for postage value used, based on what is found. The provider may check out and withdraw a specifically designated manually reset meter model from service without USPS participation when the provider uses a USPS-approved process to transfer the postage remaining on the meter directly to a remotely reset meter. Licensees may also submit their own transaction records, if any, or a system-generated register as supporting documentation.

b. For a remote reset postage evidencing system being checked out and withdrawn from service, the unused postage value remaining on the system may be transferred by the USPS to another of the licensee's postage evidencing systems licensed at the same post office, or to the licensee's postage payment account, or the licensee may request a refund. The USPS must examine the meter and verify the amount before a refund or credit is initiated for the unused postage value or additional postage is collected, based on what is found, unless the provider has a USPS-approved system for automated transfer of funds from one meter to another. In this instance, the provider must examine the meter before a refund can be issued for the remaining postage balance. The licensee may also submit transaction records or a system-generated register as supporting documentation.

c. For a PSD Meter or IBI Meter being checked out and withdrawn from service, an amount equivalent to the postage value remaining on the system will be refunded to the licensed user along with any unused balance in the licensee's postage payment account. The provider must examine a PSD Meter or IBI Meter and verify the amount before a refund or credit is initiated for the unused postage value or additional postage is collected, based on what is found. The licensee may also submit transaction records, if any, or a system-generated register as supporting documentation.

d. For a PC Postage system that is checked out and withdrawn from service, the USPS refunds the entire unused postage value remaining on the PSD for the user's system. The refund is issued through the licensee's provider. The licensee must notify the provider of the intent to withdraw the system. To determine the remaining postage value on the PC Postage system, the licensee has the PC Postage system generate a refund request indicium for transmittal to the provider for verification. A refund can be issued only when the system PSD is in the provider's possession.

3.2 Unused Postage Evidencing System Indicia on Mailpieces or Labels

All refund requests for unused postage evidencing system indicia must include proof that the person or entity requesting the refund is the licensee for the postage evidencing system that printed the indicia. Refunds are considered as follows:

a. Unused postage evidencing system indicia, except for those printed by a PC Postage system, are considered for refund only if complete, legible, and valid. They must be submitted by the licensed user to the postmaster at the licensing post office with Form 3533 within 60 days of the date in the indicia. The refund request must be submitted with the part of the envelope or wrapper showing the addressee's name and address (including the window on a window envelope). Indicia printed on labels or tapes not stuck to wrappers or envelopes must be submitted loose. If a part of the indicia is printed on one envelope or card and the remaining part on another, the two must be fastened together to show that they represent one indicium. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them. Envelopes or address parts of wrappers on mail returned to sender from the mailing office, marked to show no effort was made to deliver (e.g., ''received without contents''), must be submitted separately with an explanation.

b. Unused indicia printed by a PC Postage system are considered for refund only if they are complete, legible, and valid and are submitted to the authorized provider for verification within 30 days of the date of mailing shown in the indicia, with the required documentation. In support of the refund request, indicia printed on an envelope or wrapper are submitted with the part of the envelope or wrapper showing the addressee's name and address (including the window in a window envelope). For indicia printed on a label that is not affixed to an envelope or wrapper, the complete label is submitted loose.

3.3 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

a. Reply envelopes or cards paid at the proper postage rate.

b. Indicia printed on labels or tape removed from wrappers or envelopes.

c. Indicia lacking a date, identification of the licensing post office or other necessary information that may be required.

d. Indicia printed on mail dispatched and returned to sender as undeliverable as addressed, including mail marked ''no such post office'' and mail addressed for local delivery and returned after directory service was given or delivery was attempted.

3.4 Rounding

Any fraction of a cent in the total to be refunded is rounded down to the whole cent (e.g., $4.187 is rounded to $4.18).

4.0 Refund Request for Excess Postage (Value Added Refund)—at Time of Mailing

* * * * *

4.10 Form 8096 Required

[Revise 4.10 to read as follows:]

The presenter must provide the USPS with an original Form 8096 completed and signed by each of the presenter's customers who meter any pieces in the mailing for which a VAR is requested, and a list of those customers. If postage is affixed to the pieces using a postage evidencing system by an intermediate agent (not the presenter of the mailing) for the owner of the pieces, a signed Form 8096 must be on file from the agent whose postage evidencing systems were used to affix the postage. Refund requests are denied if all required Forms 8096 are not provided.

4.11 Form 8096 Not Required

Form 8096 is not required for a customer whose mail is metered by the presenter with the presenter's own postage evidencing system. In such cases, the presenter must provide the post office where it submits refund requests with a list, in ascending numeric order, of its own postage evidencing system serial numbers and those of any intermediate agent used for affixing postage to the pieces included in the mailing.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published to include this final rule.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–28010 Filed 11–7–01; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Production, Distribution, and Use of Postage Meters (Postage Evidencing Systems) and Postal Security Devices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Domestic Mail Manual* (DMM) P030 to include policies and regulations pertaining to more secure postage evidencing systems, such as those that use a Postal Security Device (PSD), those that generate information-based indicia (IBI), and PC Postage (TM). The term ''postage evidencing systems'' is the collective term used when referring to these systems.

The Postal Service will publish proposed revisions to Title 39, Code of Federal Regulations (CFR) part 501, *Authorization to Manufacture and Distribute Postage Meters,* to include policies and regulations pertaining to more secure postage evidencing systems, such as those that use a PSD, those that generate IBI, and PC Postage, in a future issue of the **Federal Register**.

DATES: This rule is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, (703) 292–3590, or facsimile, (703) 292–4073.

SUPPLEMENTARY INFORMATION: The proposed rule to replace the current DMM P030, Postage Meters and Meter Stamps, was published in the **Federal Register** August 15, 2001, (66 FR 42820). The Postal Service requested that comments on the proposed rule be submitted by September 14, 2001. The date for receipt of comments was extended to September 25, 2001. The Postal Service received three written comments from postage evidencing system providers. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule. The Postal Service's evaluation of the significant comments follows. The final rule, as revised, follows the discussion of the comments and of the other significant changes made since publication of the proposed rule.

Discussion of Comments

1. Specifications

(a) One commenter requested that the regulations name specific technologies that would meet certain postage evidencing system requirements.

There are many different solutions to meeting postage evidencing system requirements. We made no changes to the generalized terminology used.

(b) One commenter requested that the definition of a PC Postage system be changed to require the system to print the destination address at the same time it prints the indicium.

A PC Postage system need not print the destination address when it prints the indicium. We made no changes to the definition of a PC Postage system.

(c) One commenter noted that although the regulations state that remote reset meters are reset electronically at the location of the meter, there might be nonelectronic means for resetting such meters.

The Postal Service agrees with the commenter and revised the regulation.

(d) One commenter suggested that the fluorescent ink used in a postage evidencing system must be Postal Service-approved ink.

The Postal Service agrees with the commenter and changed the regulation in response to this comment.

(e) One commenter suggested that users must be required to use only those labels approved by the Postal Service for a given postage evidencing system when using that system.

The Postal Service agrees with the commenter and changed the regulation in response to this comment.

2. The Relationship Between the Customer and Their Postage Evidencing System Provider

(a) One commenter noted that noncompliance with the terms and conditions of the authorized provider's lease or rental agreement should be a reason for revoking a license that authorizes lease or rental of a postage evidencing system. The commenter also requested requiring the immediate surrender of a postage evidencing system or Postal Security Device (PSD) upon termination of a lease or rental agreement.

We revised the regulations to include licensee failure to abide by the terms and conditions of the authorized provider's lease or rental agreement, as a reason for possible revocation of a license. We added termination of a lease or rental agreement, as a reason for requiring the immediate surrender of a postage evidencing system or PSD.

(b) One commenter requested that the agreement between the provider and their customer be referred to as a ''rental'' instead of a ''lease.''

To allow for a variety of contractual relationships, the text was changed to use the phrase ''lease or rental agreement'' for all references to the agreement between the provider and their customer.

(c) One commenter requested that the Postal Service clarify that the base or host of the mailing system may be leased, sold, or rented at the discretion of the provider, although the postage evidencing system or PSD remains the property of the provider.

We revised the regulation to clarify that the base or host component of the mailing equipment that supports the postage evidencing system or PSD may be sold, leased, or rented at the discretion of the provider and the customer, in accordance with the

product approval as granted by the Postal Service.

3. Licensing

(a) Two commenters requested an increase to the proposed 30-day time period after which a license authorization to lease or rent a postage evidencing system can be cancelled when an active system is not associated with the license. The commenters noted that seasonal business or delays in fulfillment of new meter orders could cause a 30-day period of inactivity.

The Postal Service carefully considered this request and agrees that there may be some inconveniences for licensed users in some circumstances if license authorization to lease or rent a postage evidencing system can be cancelled when an active system is not associated with the license for 30 days or more. The regulation was changed to extend the period, to 60 days, in which a system can be inactive before the Postal Service can cancel a user's license authorization, and to allow exceptions for seasonal users.

(b) One commenter requested that since products can be distributed via the Internet or telemarketing, the regulation should allow for the licensee to enter into an agreement by other means than a ''signed agreement.''

The Postal Service agrees with this request and eliminated this requirement.

(c) One commenter requested that licensee information be included in the national change-of-address database to alert the Postal Service and providers of potential customer relocations.

The provider may access available databases to determine potential customer relocations at its discretion. We made no changes to the requirement.

4. Postage Evidencing Systems Outside the United States

(a) One commenter noted that *users* do not receive any special documentation from the Postal Service giving approval to use a postage evidencing system outside the country.

The Postal Service reviewed the regulation and clarified that the *provider* receives the approval from the Postal Service to place a postage evidencing system outside the country.

(b) One commenter questioned the requirement that all postage evidencing systems authorized for use outside the United States have enhanced security features that include digital indicia.

The Postal Service reviewed the requirement and revised it so that the requirement for postage evidencing systems to generate digital indicia is now the same for meters placed outside the country as it is for domestic meters.

(c) One commenter questioned the need for more frequent inspections of postage evidencing systems located outside the country and asked that inspection and examination schedules for all postage evidencing systems be the same regardless of their location.

The security of postage evidencing systems located outside the country must be ensured. The Postal Service reviewed the inspection and examination schedule for such systems located, and deleted the requirement for more frequent inspections and examinations. The Postage Evidencing System Inspection and Examination Schedule now applies to all systems, however, special circumstances may be invoked to inspect systems placed outside the country on a more frequent basis.

5. User Responsibilities

(a) One commenter noted that the requirements for deposit of mail are confusing and suggested that the Postal Service remove all barriers for customers to deposit mail. The commenter noted that drop shipment of metered mail and zone-rated Priority and Express Mail are the areas of greatest concern.

The Postal Service revised the regulation on deposit of mail to clarify the requirements. All single-piece-rate metered mail may be deposited in any collection box, unless specially marked collection boxes are provided. All metered Express Mail and metered Priority Mail can now be deposited in any collection box, unless specially marked collection boxes are provided to increase customer convenience in using those services.

(b) Two commenters questioned the requirement for certain users of PC Postage systems to submit a mailpiece to the provider for quality assurance evaluation every 12 months. One commenter suggested that this requirement should be a Postal Service responsibility as part of the mail acceptance process, rather than a provider responsibility. The other commenter suggested that the requirement be waived if the customer uses a printer that is sold or specified by the provider.

The Postal Service carefully considered this requirement, which is limited to PC Postage systems that print indicia with a printer that may also be used for nonpostal applications. The provider approval or specification of the printer used does not give the system user immunity from this requirement. The Postal Service does not agree that this should be a postal responsibility and makes no change to this requirement.

(c) One commenter questioned the restriction on using different forms of postage evidencing on the same mailpiece since it could inconvenience customers who have more than one postage evidencing system.

Different forms of postage evidencing are handled differently for facing and cancellation during mail processing. The Postal Service changed this requirement to limit it to letter-size, single-piece-rate mailpieces.

6. Resetting and Payment Options

(a) One commenter requested that the details of the Postage Payment Agreement be included in the regulations. We changed the regulation to require use of an approved postage payment process, rather than the signing of a specific agreement. The detailed requirements for the postage payment process will be included in Title 39, Code of Federal Regulations (CFR) part 501, *Authorization to Manufacture and Distribute Postage Meters,* with other regulations affecting providers of postage evidencing systems. The Postal Service will publish proposed revisions to this part to include policies and regulations pertaining to more secure postage evidencing systems, such as those that use a PSD, those that generate IBI, and PC Postage, in a future issue of the **Federal Register**.

(b) One commenter requested that the on-site meter service program be available at any provider's office rather than just branch offices to ensure coverage under the program for direct distribution centers.

The Postal Service agrees with the commenter and changed the regulation in response to this comment.

(c) Commenters requested changes to the payment options for postage evidencing systems, for example extending the use of credit cards to systems other than PC Postage and allowing the use of checks as payment for postage on PC Postage systems.

The Postal Service carefully considered the use of different payment options for postage evidencing systems and does not agree that these should be changed at this time. We made no change to the regulation.

(d) In response to the requirement that the provider document each reset transaction for the user unless the provider gives the user a monthly statement documenting all transactions and the balance after each transaction, one commenter suggested that the provider could give the customer the option of whether or not to receive this

monthly statement. The commenter noted that there are multiple options for providing statements, including offering the customer the option not to receive one.

The regulation does not specify the method used to provide the documentation. The Postal Service makes no change to this requirement.

7. Withdrawal and Return of Postage Evidencing Systems

(a) One provider asked that instead of requiring that a defective postage evidencing system or PSD be retrieved by the provider within 3 days, that the regulation state that the retrieval process *begin* within that time.

The Postal Service changed the regulation to require that the provider *begin* the retrieval process for a defective postage evidencing systems or PSD within *2* days of notification by the licensee.

(b) One commenter noted that with prior Postal Service approval, the provider procedures for check out and withdrawal of a manually reset meter may vary from those in the proposed regulation.

The Postal Service reviewed the current procedures and changed the regulation since the provider may also check out a specifically designated meter model from service by using a Postal Service-approved process to transfer the postage remaining on the manually reset meter directly to a remotely reset meter.

(c) One commenter asked that an option be added to allow the transfer of unused postage in a remote reset Generation 1 postage meter checked out of service to the appropriate meter resetting account after Postal Service verification.

The Postal Service changed the regulation by adding this option to reflect current practice.

(d) One commenter questioned the requirement that postage evidencing systems or PSDs that are returned must be shipped by Priority Mail unless the Postal Service gives written permission to ship at another rate or special service. The commenter noted that the Postal Service should not require use of a Postal Service product when there are equivalent or better products offered by the private sector that provide for equivalent or better tracking and tracing capabilities.

The Postal Service revised the regulation by requiring the use of Priority Mail with Delivery Confirmation to return postage evidencing systems or PSDs to the provider when the unit is withdrawn from service, unless the Postal Service gives written permission to ship by another means or service.

8. Regulations on the Provider

There were several requests for clarification of the regulations affecting providers and their relationship with the Postal Service.

The *Domestic Mail Manual* (DMM) regulates customer use of postal services. Regulations affecting providers of postage evidencing systems are found in Title 39, Code of Federal Regulations (CFR) part 501, *Authorization to Manufacture and Distribute Postage Meters.* The Postal Service will publish proposed revisions to this part to include policies and regulations pertaining to more secure postage evidencing systems, such as those that use a PSD, those that generate IBI, and PC Postage, in a future issue of the **Federal Register**.

Discussion of Other Changes

1. We added a statement that indicia are also called ''meter stamps'' or ''metered postage.''

2. We limited check in and check out of remote reset meters to the licensing post office, unless the on-site meter program is used.

3. We added a requirement that matter other than postage or postal markings printed by postage evidencing systems must not emulate valid indicia. This requirement applies to both letterpress and digital indicia.

4. We made minor editorial changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For reasons stated in the preamble, the Postal Service is amending 39 CFR part 111 as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

P Postage and Payment Methods

P000 Basic Information

* * * * *

[Revise the title and text of P030 as follows:]

P030 Postage Meters (Postage Evidencing Systems)

Summary: P030 describes the use and regulations for postage meters (postage evidencing systems) to prepare metered mail.

1.0 BASIC INFORMATION

1.1 Definition

Postage evidencing systems are secure postage metering systems that generate indicia imprinted on or affixed to a mailpiece to evidence prepayment of postage. The USPS regulates these systems and their use to protect postal revenue. Only USPS-authorized manufacturers or product service providers (''providers'') may design, produce, and distribute the systems. Misuse of a postage evidencing system to avoid payment of postage is punishable by law. The major components of a postage evidencing system are:

a. Funds registers and accounting functions to store and maintain postal financial data. Two funds registers are required:

(1) The descending register that records the postage value remaining in the postage evidencing system.

(2) The ascending register that increases as postage is printed. This register records the total value of all postage printed during the life of the postage evidencing system unless it is reset to zero by the provider during servicing between customers or when it reaches its maximum limit.

b. Indicia generated by the system to show evidence of postage prepayment on the mailpiece. Indicia are also called ''meter stamps'' or ''metered postage.''

c. USPS and provider infrastructure to support user licensing and customer information, ensure proper payment for postage, set and reset the system with postage value, and provide for inventory management. Provider and USPS interface to accomplish these functions.

1.2 Types

Generation 1 postage evidencing systems use industry-standard electronic components for managing the registers and accounting for postal funds. Generation 2 postage evidencing systems use a USPS-approved electronic component called a ''Postal Security Device (''PSD'') for managing the registers and accounting for postal funds. All PSDs must meet USPS performance criteria and must have a self-disabling feature that prohibits the printing of postage when specific programmed requirements are not met. For all Generation 2 postage evidencing systems the provider and USPS infrastructure must interface to support licensing and customer information, ensure proper payment for postage, and provide for inventory management. The systems are categorized as follows:

a. Traditional postage meter-a Generation 1 postage evidencing system:

(1) The industry-standard electronic components used for managing registers and accounting for postal funds may or may not include a self-disabling feature that prohibits the printing of postage when specific programmed requirements are not met.

(2) Indicia are printed either by a letterpress or digital printing process. Letterpress indicia are generated by the impact of a hard, inked printing die on the print surface. Digital indicia are generated electronically and produced on the print surface by a nonimpact technology, such as an ink jet, thermal, or laser printing process.

(3) The provider and USPS infrastructure systems for all Generation 1 postage evidencing systems interface to support licensing and customer information and to provide for inventory management. Generation 1 postage meters can be either manually reset (the meter must be physically taken to the USPS for resetting) or remotely reset. Remotely reset meters are replacing manually reset meters in accordance with a phased USPS retirement plan. The USPS infrastructure currently supports payment for postage for all Generation 1 postage evidencing systems, both manually reset and remotely reset. The provider infrastructure supports payment for postage for remotely reset meters but does not support payment for postage for manually reset meters.

b. PSD Meter-a Generation 2 postage evidencing system:

(1) A PSD Meter must use a USPS-approved PSD.

(2) The indicia generated by a PSD Meter must be digital indicia approved by the USPS.

(3) A PSD Meter must be reset using an electronic connection between the provider's postage resetting system and the postal registers in the PSD.

c. Information-Based Indicia (IBI) Meter-a Generation 2 postage evidencing system:

(1) An IBI Meter must use a USPS-approved PSD.

(2) An IBI Meter must generate information-based indicia (IBI). IBI are digital indicia that include human-readable information and a USPS-approved two-dimensional barcode or other USPS-approved symbology, with a digital signature and other required data fields.

(3) An IBI Meter must be reset with an electronic connection between the provider's postage resetting system and the postal registers in the PSD.

d. PC Postage (TM) system-a Generation 2 postage evidencing system:

(1) A PC Postage system must use a USPS-approved electronic PSD.

(2) The indicia generated by a PC Postage system must be IBI.

(3) A PC Postage system must be reset with postage value using a personal computer to establish an electronic connection between the provider's postage resetting system and the postal registers in the PSD. The user must employ a personal computer to access critical infrastructure functions.

1.3 Authorized Providers

Postage evidencing systems are available only from authorized providers. All postage evidencing systems and PSDs remain the property of the USPS-authorized provider and are available only through a lease or rental agreement with the provider or its authorized agent. The USPS holds providers responsible for the control, secure operation, distribution, maintenance, inspection, and replacement of postage evidencing systems and PSDs throughout their entire life cycle. The provider is also responsible for the secure disposal or destruction of postage evidencing systems and PSDs at the end of their useful life. The following providers are authorized:

Ascom Hasler Mailing Systems Inc, 19 Forest Pkwy, Shelton CT 06484–6140, 800–243–6275, *www.ascom-usa.com*

Francotyp-Postalia Inc, 140 N Mitchell Ct, Ste 200, Addison IL 60101–5629, 800–341–6052, *www.fp-usa.com*

Neopost 30955 Huntwood Ave, Hayward CA 94544–7084, 800–624–7892, *www.neopostinc.com*

Pitney Bowes Inc, 1 Elmcroft Rd, Stamford CT 06926–0700, 800–322–8000, *www.pitneybowes.com*

PSI Systems Envelope Manager Software, 247 High St, Palo Alto CA 94301–1041, 800–576–3279 x140, *www.envmgr.com*

Stamps.Com, 3420 Ocean Park Blvd, Ste 1040, Santa Monica CA 90405–3035, *www.stamps.com*

1.4 Licensee

The licensee of a postage evidencing system is the person or entity authorized by the USPS to lease or rent a system. The licensee cannot own a postage evidencing system or PSD and may possess a postage evidencing system only under a valid lease or rental agreement with an approved provider or its agent. The licensee is responsible for the control, maintenance, and use of the postage evidencing system in accordance with USPS regulations. The base or host component of the mailing equipment that supports the postage evidencing system or PSD may be sold, leased, or rented at the discretion of the provider and the customer, in accordance with the product approval as granted by the USPS.

1.5 Possession of a Postage Evidencing System

No person or entity other than an authorized provider, its authorized agent, the USPS, or a licensee may have a postage evidencing system or PSD in their possession. Any person or entity must immediately surrender a postage evidencing system or PSD to the provider, the provider's agent or to the USPS upon termination of a lease or rental agreement.

1.6 Use of a Postage Evidencing System

No person or entity other than an authorized provider may use a postage evidencing system until the provider initializes the system or, where applicable, the USPS sets and seals the system, performs the required validations, and checks the system into service. Once the postage evidencing system is properly in service, it may be used by the licensee or others authorized by the licensee. The licensee is responsible for control and use of the system.

1.7 Classes of Mail

Postage may be paid by imprinting or affixing indicia generated by a USPS-approved postage evidencing system on any class of mail except Periodicals. Such mail is called ''metered mail'' and is entitled to all privileges and subject to all conditions applying to the various classes of mail.

2.0 LICENSING

2.1 Procedures

To possess and use a postage evidencing system, the user must apply for and be granted a license by the USPS. A single license allows the licensee to use multiple postage evidencing systems for metered mail deposited in the licensing post office in accordance with 11.0. A postage evidencing system can be licensed to only one post office. The user must submit a separate application, be granted a separate license authorization, and have a separate postage evidencing system for each licensing post office where the user intends to deposit mail. The procedures are as follows:

a. The applicant submits to the provider all data required for the license, including the city name, state and ZIP Code of the licensing post office where the user intends to deposit the metered mail.

b. The provider submits the required information to the USPS electronically.

c. The USPS notifies the provider after granting the license.

d. The USPS can cancel the licensee's authorization to rent or lease postage evidencing systems if an active system is not associated with the license for 60 days or more. The customer must reapply for a license to resume the use of a postage evidencing system. Exceptions may be granted to seasonal users.

2.2 Licensee's Agreement

By applying for a USPS license to rent or lease a postage evidencing system, the applicant agrees that the license may be revoked immediately and the provider notified by the USPS to withdraw the postage evidencing system from service for the following reasons:

a. The postage evidencing system is used in any fraudulent or unlawful scheme or enterprise.

b. The postage evidencing system is not used for 12 consecutive months.

c. The licensee fails to exercise sufficient control of the postage evidencing system or PSD or fails to comply with the regulations for its care or use.

d. The licensee fails to abide by the terms and conditions of the authorized provider's lease or rental agreement.

e. The postage evidencing system or PSD is taken or used outside the United States, its territories or possessions, except as specifically authorized under these regulations by the manager of Postage Technology Management, USPS Headquarters.

f. Mail is deposited at other than the licensing post office (except as permitted under 11.0).

2.3 Refusal to License a User

The USPS notifies both the applicant and the provider in writing when authorization for a license is refused. Any applicant refused authorization may appeal the decision under 2.5. The USPS may refuse authorization for a license for the following reasons:

a. The applicant submitted false information on the license application.

b. The applicant violated any regulation regarding the care or use of a PSD, postage evidencing system, or the indicia generated by a system that resulted in the revocation of the applicant's postage meter or postage evidencing system license within 5 years before the date the applicant submits the application.

c. There is sufficient reason to believe that the applicant will use the postage evidencing system or PSD in violation of USPS regulations.

2.4 Revocation of a License

The USPS can revoke the user's license when the user does not fulfill the responsibilities for the care and use of a PSD, postage evidencing system, or the indicia generated by a system. The USPS notifies the licensee's provider(s) of the revocation so that the provider(s) can notify the licensee, cancel the lease or rental agreement(s), and withdraw all postage evidencing systems from service. The notification is sent by certified mail. Revocation takes effect 10 calendar days after the licensee receives the revocation notice unless, within that time, the licensee appeals the decision under 2.5. A license is subject to revocation for the reasons listed in 2.2, or if there is probable cause to believe that it is to be used in violation of USPS regulations.

2.5 Appeal Process

An applicant who is refused a license, or a licensee whose license is revoked, may file a written appeal with the manager of Postage Technology Management, USPS Headquarters (see G043), within 10 calendar days after receiving notification of the decision.

3.0 LICENSED USER'S RESPONSIBILITIES

3.1 Signed Lease or Rental Agreement With Financial Agreement for Resetting

The licensee must enter into a lease or rental agreement with the provider that includes provisions for resetting the postage evidencing system with postage and an authorized postage payment process under which the licensee agrees to make payment for postage using a payment method approved by the USPS. The USPS is not a party to the lease or rental agreement but use of a postage evidencing system is subject to the regulations of the USPS and the terms and conditions of the lease or rental agreement and the payment process.

3.2 Custody

A postage evidencing system or PSD that is in the possession or custody of a licensee must remain in that user's custody until it is returned to the authorized provider, to its authorized agent, or to the USPS, or is seized by the U.S. Postal Inspection Service for violation of Federal law.

3.3 Update Licensee Information

The licensee must update required license application information with the provider whenever there is any change in the licensee's name, address, telephone number, licensing post office, location of the postage evidencing system, or location of the PSD. The USPS will update the license information based on the receipt of updated information submitted by the provider.

3.4 Relocation of Licensee

When a licensee notifies the provider of a change of the licensing post office in accordance with 3.3, the provider will perform the appropriate accounting functions to withdraw the postage evidencing system from service at the original licensing post office and install it and then reauthorize it for use at the new licensing post office, or issue another postage evidencing system for use at the new location.

3.5 Required Resetting

All postage evidencing systems must be reset at least once every 3 months. A zero value reset will meet this requirement.

3.6 Transaction Files

Some postage evidencing systems generate records of transactions relating to indicia creation, funds transfer (including postage value downloads), and system or PSD audits. For postage evidencing systems that do not maintain automated transaction records, licensees are encouraged to maintain their own records of the readings of the ascending and descending registers for each day of operation. Transaction records are important in the validation of requests for refunds in the case of system malfunction.

3.7 Inspection and Examination

The licensee must, upon request, make immediately available for examination and audit by the provider or by the USPS any postage evidencing system or PSD in the licensee's possession and any corresponding transaction records. The USPS can perform physical or remote examination of any postage evidencing system or PSD. The licensee must meet the requirements for provider inspections and USPS examinations. All postage evidencing systems are inspected in accordance with the Postage Evidencing Systems Inspection and Examination Schedule below.

POSTAGE EVIDENCING SYSTEMS INSPECTION AND EXAMINATION SCHEDULE

Security level	Postage evidencing system	Provider inspection	USPS examination requirements
1	Manually reset postage meter	Every 6 months	Must bring to post office for examination when not reset within 3 months.
2	Remote reset postage meter with letterpress or digital indicia, but without self-disabling feature.	Annually or every 6 months when there is no setting activity in 6 months.	Examinations in special circumstances.
3	Remote reset meter with letterpress indicia and self-disabling feature.	Every 2 years or every 6 months when there is no setting activity in 6 months.	Examinations in special circumstances.
4	Remote reset postage meter with digital indicia and self-disabling feature.	Every 2 years or enhanced inspection process when approved by USPS.	Examinations in special circumstances.
5	PSD Meter, IBI Meter, or a PC Postage system.	Inspections in special circumstances	Examinations in special circumstances.

3.8 Quality Assurance

Some PC Postage systems print indicia with a printer that may also be used for nonpostal applications. Users of such systems must forward a mailpiece bearing an indicium produced by the postage evidencing system and associated printer to the provider for quality assurance evaluation. The licensee must forward a quality assurance mailpiece to the provider when the system is installed, when there is a change to the printer connected to the system, and at least once every 12 months thereafter, in accordance with provider directions.

3.9 Labels With Fraud Warning and Serial Number

The licensee must ensure that the fraud warning label placed by the provider on the postage evidencing system or its housing is not removed or destroyed while the postage evidencing system is in the licensee's possession. The fraud warning contains basic reminders on leasing or rental and use of the postage evidencing system, warnings against system tampering or misuse resulting in nonpayment of postage owed, and the penalties for such system misuse. The USPS does not authorize postage evidencing systems for use without this fraud warning. When the postage evidencing system has a serial number or barcode equivalent on the system housing, the user must ensure that neither the serial number nor the barcode is removed or destroyed while the postage evidencing system is in the licensee's possession.

3.10 Custody of Suspect Postage Evidencing Systems or PSDs

The USPS may conduct unannounced, on-site examinations of postage evidencing systems or PSDs reasonably suspected of being manipulated or defective. A postal inspector may immediately withdraw a suspect postage evidencing system or PSD from service for physical and/or laboratory examination. The inspector withdrawing a suspect postage evidencing system or PSD issues the licensee a written acknowledgement of receipt of the item; forwards a copy to the provider; and, if appropriate, assists in obtaining a replacement postage evidencing system or PSD. Unless there is reason to believe that the postage evidencing system or PSD is fraudulently set with postage, existing postage in the postage evidencing system or PSD is refunded to the licensee, in accordance with established refund procedures, when it is withdrawn from service.

3.11 Defective Postage Evidencing System or PSD

A defective postage evidencing system or PSD is one that is inoperable or inaccurately reflects its proper status. A faulty postage evidencing system or PSD may not be used under any circumstance. The procedures for dealing with a defective system are as follows:

a. The licensee must immediately report any defective postage evidencing system or PSD to the provider.

b. The provider must begin the retrieval process for any defective postage evidencing system or PSD within 2 business days of notification by the licensee.

c. The provider may supply the licensee with a replacement postage evidencing system or PSD unless there is a reasonable basis for suspecting actual or attempted tampering.

d. The provider may not authorize or issue a refund for monies remaining on the faulty postage evidencing system or PSD until the faulty system is in the possession of the provider and has been carefully inspected.

3.12 Missing Postage Evidencing Systems or PSDs

The licensee must immediately report to the provider the loss or theft of any postage evidencing system or PSD or the recovery of any missing postage evidencing system or PSD. The report must include the system identification number and the date, location, and details of the loss, theft, or recovery. In the case of suspected theft, the licensee must submit a copy of the police report to the provider upon request. The provider will report all details of the incident to the manager of Postage Technology Management, USPS Headquarters, in accordance with established procedures.

3.13 Returning a Postage Evidencing System or PSD

A licensee in possession of a faulty or retired postage evidencing system or PSD, or a licensed user who no longer plans to keep a postage evidencing system or PSD in their possession for any reason, must return it within 3 business days to the provider to be withdrawn from service. Postage evidencing systems and PSDs must be shipped by Priority Mail with Delivery Confirmation unless the manager of Postage Technology Management, USPS Headquarters, gives written permission to ship by another means or service.

3.14 Approval for Use of Postage Evidencing Systems at Military Post Offices

A person authorized by the Department of Defense to use the services of an overseas military post office, such as an APO or FPO, can use a USPS-approved postage evidencing system. For such users, the APO or FPO will be designated as the licensing post office on their user license. These users must deposit the mail prepared with their system at the licensing post office. All USPS policies and regulations regarding postage evidencing systems apply.

3.15 Approval for Use of Postage Evidencing Systems Outside the United States

The manager of Postage Technology Management, USPS Headquarters (see G043), must give approval to the provider before the provider may place a postage evidencing system with a licensee who plans to use the system outside the customs territory of the United States to print evidence of U.S. postage. The procedures and conditions are as follows:

a. Licensees must maintain a permanent, established business address in the United States.

b. Postage evidencing systems used in foreign locations may be leased or rented only from those providers who have an authorized dealer or representative in the country where the postage evidencing system is to be located. The only exception is for those PC Postage systems for which the PSD remains in the custody and possession of the provider rather than the licensee.

c. Licensees are subject to all USPS regulations and U.S. statutes pertaining to mail, mail fraud, and misuse of postage evidencing systems.

d. All postage evidencing systems authorized by the USPS for use in foreign locations must have enhanced security features that include remote reset and a self-disabling feature that prevents printing of postage when specific programmed requirements are not met. Only those systems specifically approved in writing by the manager of Postage Technology Management, USPS Headquarters, may be used outside the customs territory of the United States.

e. Potential users must submit to the provider all data required for a license to lease or rent postage evidencing systems outside the country. The provider will annotate the application to state that it is for the foreign use of a U.S. postage evidencing system and show where the system is to be located. The provider must submit the application to the manager of Postage Technology Management, USPS Headquarters, for review and approval. Once an application is approved and the license authorized, Postage Technology Management will designate the licensing post office and notify the provider and the licensee. The license can be used for multiple postage evidencing systems as long as they all belong to the same licensed user and are licensed at the same licensing post office. Mailers who already have a USPS license to lease or rent postage evidencing systems must apply separately to participate in this program.

f. The provider selected by the licensee must agree in writing to all terms and conditions established by the USPS pertaining to the distribution of U.S. postage evidencing systems outside of the United States. Once the postage evidencing system is installed, the provider must provide the information on system placement directly to the manager of Postage Technology Management, USPS Headquarters.

g. Mail to be metered must be metered with U.S. postage and must be entered at the licensing post office.

h. Postage evidencing systems located outside the United States must be remotely reset at least once every 3 months. A reset for zero postage satisfies this requirement. The Postage Evidencing System Inspection and Examination Schedule (3.7) applies to all systems, however special circumstances may be invoked to inspect systems placed outside the country on a more frequent basis. Failure to make the postage evidencing system available for inspection may result in the revocation of the foreign use license.

3.16 Address Management System CD–ROM

For postage evidencing systems designed to access the USPS Address Management System (AMS) CD–ROM, the licensed user must maintain address quality by ensuring the CD–ROM is updated at least once every 6 months.

4.0 MANUALLY RESET GENERATION 1 POSTAGE METERS

4.1 Initial Setting, Check In, and Installation

A manually reset meter may be installed only as a replacement to complete the current lease or rental term for an existing meter of the same make and model. All manually reset meters will be taken out of service in the near future and replaced by remotely reset meters in accordance with a phased USPS retirement plan. Before delivering a manually reset postage meter to the licensee, the provider must present the meter and a completed PS Form 3601–C, Postage Meter Activity Report, to the licensing post office to have the meter set, sealed (if applicable), and checked into service by the post office where it is to be regularly set or examined, unless the meter is serviced through the on-site meter service program described in 4.5. The installation process for manually reset meters is completed when the data from PS Form 3601–C is transmitted to the appropriate postal information systems.

4.2 Check Out and Withdrawal

When a manually reset meter is withdrawn from a user, the provider must present the meter and a completed PS Form 3601–C to the licensing post office to have the meter checked out of service by the post office where it was regularly set or examined, unless the meter was serviced through the on-site meter service program described in 4.5. The manager of Postage Technology Management, USPS Headquarters, may allow the provider to check out a specifically designated manually reset meter model from service without USPS participation when the provider uses a USPS-approved process to transfer the postage remaining on the meter directly to a remotely reset meter. The withdrawal process for manually reset meters is completed when the data from PS Form 3601–C is transmitted to the appropriate postal information systems.

4.3 Location of Setting

Except under 4.5, a manually reset meter must be set at the licensing post office. Alternative meter setting locations are no longer allowed. A meter may not be set at a contract postal unit.

4.4 Payment for Postage Settings

Payment must be made for postage at the time of resetting. Payment may be in cash or by check, USPS-approved debit card, or money order. Payment is subject to USPS standards and procedures.

4.5 On-Site Meter Service Program

The on-site meter service program, where available, allows qualified USPS employees to set or examine manually reset meters and check them into or out of service at a licensee's place of business within the area served by the licensing post office, or at a facility of the provider or their agent. Only the licensee's meters participating in the on-site meter service program may be serviced at that location. A fee is charged for each meter set, examined, or checked into or out of service at a licensee's place of business, unless a USPS employee qualified to service meters is regularly assigned to that licensee's location for other postal administrative duties. The licensee must pay applicable postage and on-site meter service fees in R900 by check at the time of the meter service for manually reset meters. A fee is charged for each meter examined or checked into or out of service at a facility of the provider or their agent. The provider must pay applicable postage and on-site meter service fees in R900 by check at the time of the meter service. Fees are charged in accordance with R900.14.

4.6 Postage Transfer or Refund

After USPS verification, unused postage in a manually reset meter checked out of service may be transferred to another of the licensee's meters licensed at the same post office, or the licensee may request a refund. Refunds are granted in accordance with P014.

4.7 Postage Adjustment for a Faulty Meter

To request a postage adjustment for a faulty manually reset meter, the licensee must present to the provider the meter and the licensee's transaction records, if any. After examining a meter to be checked out of service for apparent faulty operation affecting the ascending or descending registers, the provider must report the malfunction to the manager of Postage Technology Management, USPS Headquarters. The report must contain all applicable meter documentation (including the setting history and transaction records, if any) and a recommendation about the appropriate postage adjustment, if any. When the electronic redundant memory data, as examined by the provider, is inconclusive with respect to the appropriate postage adjustment, the provider must include an analysis of the licensee's recent mailing history supporting the recommended postage adjustment, the reason for the memory failure, and the method used to determine the lost register values. At the same time the report is made to the USPS, the provider must notify the licensee of the proposed postage adjustment. A licensee may appeal a postage adjustment to the manager of Postage Technology Management, USPS Headquarters (see G043), within 60 calendar days of the date that the provider submitted the postage adjustment recommendation to the USPS and notified the user.

5.0 REMOTE RESET GENERATION 1 POSTAGE METERS

5.1 Initial Setting, Check in, and Installation

A remote reset Generation 1 postage meter is checked into service in the presence of a postal employee qualified to check in postage evidencing systems. The meter is checked into service at the licensing post office unless the on-site meter service program (see 5.6) is used. The provider must furnish the postal employee with the meter and a completed PS Form 3601–C. The check in process for a remote reset Generation 1 postage meter is completed when the required data is transmitted to the appropriate postal information systems, and may be completed concurrently with or prior to installation of the meter at the licensee's location. The manager of Postage Technology Management, USPS Headquarters, may allow the provider to check in a specifically designated meter model without USPS participation when the provider uses a USPS-approved process in which the information to complete the check in process is captured directly from the postage evidencing system. The installation process for these meters is completed when the provider transmits required data to the appropriate postal information systems.

5.2 Check Out and Withdrawal

A remote reset Generation 1 postage meter is checked out of service in the presence of a postal employee qualified to check out postage evidencing systems. The meter is checked out of service at the licensing post office unless the on-site meter service program (see 5.6) is used. The provider must furnish the postal employee with the meter and a completed PS Form 3601-C. The check out process for a remote reset Generation 1 postage meter is completed when the required data is transmitted to the appropriate postal information systems. The manager of Postage Technology Management, USPS Headquarters, may allow the provider to check out a specifically designated meter model from service without USPS participation when the provider uses a USPS-approved process in which the information to complete the check out process is captured directly from the postage evidencing system. In this instance, the provider must examine the meter before a refund can be issued for the postage remaining in the meter. The withdrawal process for remote reset meters is completed when the provider transmits required data to the appropriate postal information systems.

5.3 Location of Setting

A remote reset Generation 1 postage meter is reset telephonically at the location of the meter.

5.4 Payment for Postage Settings

For a remote reset Generation 1 postage meter, the licensee may deposit funds only by check, electronic funds, or automated clearinghouse transfer, in accordance with USPS standards and procedures.

5.5 Resetting

To reset a remote reset Generation 1 postage meter, the following conditions must be met:

a. The licensee's account must have sufficient funds to cover the desired postage increment, or the provider must have agreed to advance funds to the licensee.

b. The licensee must give the provider identifying information and system audit data as required by the USPS and in accordance with the provider's resetting specifications. Before completing the resetting, the provider must verify the identifying data, authenticate the user's license, conduct the postage evidencing system audit, and ascertain whether the user's account contains sufficient funds to cover the desired postage increment.

c. After the resetting transaction is completed, the provider must document the transaction for the licensee, including the balance remaining in the licensee's account, unless the provider gives the user a monthly statement documenting all transactions for the period and the balance after each transaction.

5.6 On-Site Meter Service Program

The on-site meter service program, where available, allows qualified USPS employees to check remote reset Generation 1 meters into or out of service at a facility of the provider or their agent. Meters to be serviced are accompanied by PS Form 3601–C. A fee is charged for each meter examined or checked into or out of service at a facility of the provider or their agent. The provider must pay applicable postage and on-site meter service fees in R900 by check at the time of the meter service for remote reset Generation 1 meters. Fees are charged in accordance with R900.14.

5.7 Postage Transfer or Refund

After USPS verification, unused postage in a remote reset Generation 1 postage meter checked out of service may be transferred by the USPS to another of the licensee's postage evidencing systems licensed at the same post office, or to the customer's meter resetting account, or the licensee may request a refund. Refunds for unused postage in the meter and for any unused balance in the licensee's account are granted in accordance with P014.

5.8 Postage Adjustment for Faulty Meters

To request a postage adjustment for a faulty remote reset Generation 1 postage meter, the licensee must present to the provider the meter and the licensee's transaction records, if any. After examining a meter checked out of service for apparent faulty operation affecting the ascending or descending registers, the provider must report the malfunction to the manager of Postage

Technology Management, USPS Headquarters. The report must contain all applicable meter documentation and a recommendation regarding the appropriate postage adjustment, if any. When the electronic redundant memory data, as examined by the provider, is inconclusive as to the need for a postage adjustment, the provider must include an analysis of the licensee's recent mailing history supporting the recommended postage adjustment, the reason for the memory failure, and the method used to determine the lost register values. At the same time the report is made to the USPS, the provider must notify the licensee of the proposed postage adjustment. A licensee may appeal a postage adjustment to the manager of Postage Technology Management, USPS Headquarters (see G043), within 60 calendar days of the date that the provider submitted the postage adjustment recommendation to the USPS and notified the user.

6.0 PSD METERS AND IBI METERS

6.1 Initialization, Authorization, Check In and Installation

All PSD Meters and IBI Meters use a PSD to maintain postal registers and authorize the printing of evidence of postage. Before the licensee can print evidence of postage, these postage evidencing systems must be initialized and authorized by the provider. The initialization process installs PSD-specific information that does not change over the life cycle of the PSD. The authorization process sets user-specific information. The provider reauthorizes the PSD when certain user-specific information changes. PSD Meters and IBI Meters are checked into service by the provider. The information necessary to complete the check in process is captured directly from the postage evidencing system. The installation process for these meters is completed when the required data is transmitted to the appropriate postal information systems.

6.2 Check Out and Withdrawal

When a PSD Meter or IBI Meter is no longer used, the licensee notifies the provider and arranges to return the meter to the provider. The provider checks the meter out of service. The provider must examine the meter before a refund can be issued for any postage remaining on the meter. The information to complete the check out process is captured directly from the postage evidencing system. The withdrawal process for a PSD Meter or IBI Meter is completed when the required data is transmitted to the appropriate postal information systems.

6.3 Location of Setting

A PSD Meter or IBI Meter is reset remotely at the location of the meter by means of a connection between the provider's resetting system and the postal registers in the PSD.

6.4 Payment for Postage Settings

For PSD Meters and IBI Meters the licensee may deposit funds only by check, electronic funds transfer, or automated clearinghouse transfer, in accordance with USPS standards and procedures.

6.5 Resetting

To reset a PSD Meter or IBI Meter the following conditions must be met:

a. The licensee's account must have sufficient funds to cover the desired postage increment, or the provider must have agreed to advance funds to the licensee.

b. The licensee must provide identifying information and system audit data as required by the USPS and in accordance with the provider's resetting specifications. Before completing the resetting, the provider must verify the identifying data, authenticate the user's license, conduct a remote postage evidencing system audit, and ascertain whether the user's account contains sufficient funds to cover the desired postage increment.

c. After the resetting transaction is completed, the provider must document the transaction for the licensee, including the balance remaining in the licensee's account, unless the provider gives the user a monthly statement documenting all transactions for the period and the balance after each transaction.

6.6 Postage Refund

Unused postage in a PSD Meter or IBI Meter will be refunded to the licensed user along with any unused balance in their account under P014.

6.7 Postage Adjustment for Faulty PSD Meters and IBI Meters

When the licensee requests a postage adjustment for a faulty PSD Meter or IBI Meter, the meter must first be withdrawn from service and physically examined by the provider. The provider will compare the data in the PSD registers with the data from the system transaction records. After examining a PSD Meter or IBI Meter withdrawn from service for apparent faulty operation affecting the ascending or descending registers, the provider must notify the licensee of the proposed postage adjustment, if any. At the same time the user is notified, the provider must report the malfunction to the manager of Postage Technology Management, USPS Headquarters. The report must contain all applicable documentation (including a copy of the transaction records) and a recommendation for any appropriate postage adjustment. The licensee may appeal a postage adjustment to the manager of Postage Technology Management, USPS Headquarters (see G043), within 60 calendar days of the date that the user is notified of the proposed postage adjustment recommendation.

7.0 PC POSTAGE SYSTEMS

7.1 Initialization, Authorization, Check In and Installation

All PC Postage systems use a PSD to maintain postal registers and perform postal functions. Before the licensee can print evidence of postage using a PC Postage system, the system's PSD must be initialized and authorized by the provider. The initialization process installs PSD-specific information that does not change over the life cycle of the PSD. The authorization process sets user-specific information. The provider reauthorizes the PC Postage system PSD when certain user-specific information changes. The installation and check in process for a PC Postage system is completed when the data required by the USPS is transmitted to the appropriate postal information systems.

7.2 Check Out and Withdrawal

When a PC Postage system is no longer used, the licensee notifies the provider. The provider withdraws the system from service and transmits the required data to the appropriate postal information systems to check it out of service. A PSD in the custody of the licensee must be returned to the provider for examination before a refund can be issued for any postage remaining on the PSD.

7.3 Location of Setting

A PC Postage system is reset remotely using a personal computer with a connection between the provider's resetting system and the postal registers in the PSD.

7.4 Payment for Postage Settings

For a PC Postage system, the USPS will accept payment only in the form of credit card or automated clearinghouse debit, in accordance with USPS standards and procedures.

7.5 Resetting

To reset a PC Postage system the following conditions must be met:

a. The licensee must initiate payment to the USPS sufficient to cover the desired postage increment before requesting a postage value download to reset the system.

b. The licensee must provide identifying information and system audit data as required by the USPS and in accordance with the provider's resetting specifications. Before completing the resetting, the provider must verify the identifying data, authenticate the user's license, conduct a postage evidencing system audit, and ascertain whether payment to the USPS sufficient to cover the requested postage value download was initiated by the licensee.

c. The provider will supply the licensee with documentation of the reset transaction and the balance in the descending register, if any.

7.6 Postage Refunds

The USPS provides refunds for the entire postage value balance remaining on the PSD of a PC Postage system that is withdrawn from service and is in the possession of the provider. Refunds are requested and paid through the provider in accordance with P014.

7.7 Postage Adjustment for Faulty PSD

When the licensee requests a postage adjustment for a faulty PSD of a PC Postage system, the PSD must first be withdrawn from service and physically examined by the provider. The provider will compare the data in the PSD registers with the data from the system transaction records. After examining a PSD withdrawn from service for apparent faulty operation affecting the ascending or descending registers, the provider must notify the licensee of the proposed postage adjustment, if any. At the same time the user is notified, the provider must report the malfunction to the manager of the Postage Technology Management, USPS Headquarters. The report must contain all applicable documentation (including a copy of the transaction records) and a recommendation for any appropriate postage adjustment. The licensee may appeal a postage adjustment to the manager of the Postage Technology Management, USPS Headquarters (see G043), within 60 calendar days of the date that the user is notified of the proposed postage adjustment recommendation.

8.0 INDICIA—GENERAL INFORMATION

8.1 Amount of Postage

The value of the indicia affixed to each mailpiece must be either the exact amount due or another amount permitted by standard. Refunds for overpayment must meet the standards in P014.

8.2 Refunds for Unused Indicia

Refunds for indicia amounts already printed on an envelope or label but not mailed are made in accordance with P014.

8.3 Mixed Forms of Postage Evidencing

Different forms of evidence of prepayment of postage may not be mixed on letter-size, single-piece-rate mailpieces. In particular, postage stamps and indicia generated by a postage evidencing system may not be used on the same mailpiece; indicia generated by a postage evidencing system that uses a facing identification mark (FIM) to face the mail may not be used on the same mailpiece as indicia printed with fluorescent ink; and IBI may not be used on the same mailpiece as letterpress indicia or non-IBI digital indicia.

8.4 Use of Indicia

Valid indicia produced by a postage evidencing system can be used only to show evidence of payment for postage or other services provided by the USPS. Indicia for zero postage must not be affixed to any item delivered by another carrier. In any illustration of information-based indicia (IBI) produced by an IBI Meter or a PC Postage system, and not intended to be used as postage, the two-dimensional barcode must be rendered unreadable.

9.0 INDICIA

9.1 Approved Designs

The manager of Postage Technology Management, USPS Headquarters, must approve the design (type, format, and content) of all indicia that will be produced by a postage evidencing system. This approval shall include all elements in the indicium required by USPS regulations and the postage evidencing system performance criteria and applies to the entire area within the indicium boundary (9.4).

9.2 Legibility

Indicia must be legible. Illegible or unreadable (unscannable) indicia are not acceptable as payment of postage. Should there be a need to place multiple indicia on an envelope (*e.g.,* for redate or postage correction) the indicia must not overlap each other. Overlapping indicia are not acceptable as payment of postage. Reflectance measurements of the indicia and the background material must meet the standards in C840.5.

9.3 Position

Indicia must be printed or applied in the upper right corner of the envelope or address label. Indicia must be at least 1/4 inch from the right edge of the mailpiece and 1/4 inch from the top edge of the mailpiece, and must not infringe on the areas reserved for the FIM, POSTNET barcode, or optical character reader (OCR) clear zone. Indicia must be oriented with the longest dimension parallel to the address. When a FIM is printed with the indicia, the position of the FIM must meet the requirements in C100.5.0.

9.4 Boundaries

The USPS controls what is printed within the boundaries of indicia. The boundaries are defined as follows:

a. For letterpress indicia, the boundaries are determined by the dimensions of the printing die used by the postage evidencing system to print postal information. Licensees may obtain an additional printing die from the provider, often called the ''ad plate,'' for additional text to be included when printing indicia. The ad plate may contain postal markings (9.7) or other printed matter (9.8).

b. For digital indicia, including IBI, the boundaries are defined by the right edge of the envelope, the top edge of the envelope, and the bottom edge and the left edge of any USPS-required indicium element printed by the postage evidencing system. A 1/2-inch clear zone, within which nothing shall be printed by the postage evidencing system, must surround the indicium boundaries to the left of and below all elements of the indicium.

9.5 Contents

Unless otherwise approved by the manager of Postage Technology Management, USPS Headquarters, the following information must be included in indicia:

a. The city, state, and 5-digit ZIP Code of the licensing post office; the postage evidencing system serial number or PSD identification number; identification of the provider; the date of mailing; the words ''US Postage,'' and the postage amount.

b. As an alternative to the city, state, and 5-digit ZIP Code of the licensing post office, just the ZIP Code of the licensing post office; in this case, the words ''Mailed from ZIP Code'' may be added to the indicia.

c. For multiple indicia on a given mailpiece, information showing the licensing post office in each indicium.

d. For digital indicia, including IBI, the class of mail and presort level.

e. For IBI, the required data elements of the two-dimensional barcode in accordance with the performance criteria for the given postage evidencing system.

f. For special indicia, including the date correction or redate indicia, the postage correction indicia, indicia for APO/FPO, and the indicia for prepaid reply mail, information as required by 10.0.

9.6 Format

Arial font must be used for all postal information in the indicia. The postage amount must be at least 10-point type size. For all other required information, the type size must be at least 8 points. The mail class or endorsement, the postage amount, and the words ''US Postage'' must be in bold type and all letters must be capital letters. The words ''US Postage'' must be the most prominent and conspicuous printed matter in the indicia other than the postage amount. The remaining required information (city, state, and 5-digit ZIP Code; the date; and the PSD ID) need not be capitalized or bold. The type size used for all other text printed in the indicia must be no greater than 8 points and must not be in bold type.

9.7 Postal Markings

The postal marking that may be included in indicia vary by indicia type, as follows:

a. Letterpress indicia may include postal markings related to the class of mail and presort level, or ancillary service endorsement, in accordance with postal regulations. When placed in the ad plate area, only the postal marking may be printed, and it must fill the ad plate area as much as possible. All words must be in bold capital letters at least 1/4 inch high or 18-point type, and legible. Exceptions are not made for small ad plates that cannot accommodate a permissible marking.

b. Digital indicia may include ancillary service endorsements.

9.8 Other Matter Printed by Postage Evidencing Systems

Other printed matter must not infringe on the areas reserved for the FIM, POSTNET barcode, or optical character reader (OCR) clear zone. The matter that may be printed is based on indicia type, as follows:

a. For letterpress indicia only, advertising matter, slogans, and return addresses may be printed with the indicia within space limitations. Licensed users must obtain the ad plates for printing this matter from the authorized provider. Ad plate messages must be distinguished by the inclusion of the name of the mailer or words such as ''Mailer's Message.'' The ad plate must not be obscene, defamatory of any person or group, or deceptive, nor may it advocate unlawful action. The ad plate must not emulate any form of valid indicia or payment for postage.

b. For postage evidencing systems that print digital indicia, including IBI, an approved indicium shall include within its boundaries only postal markings and text required or recommended by USPS regulation, except that the indicium may identify the provider. Other matter may be printed only outside the boundaries of the clear zone (9.4) surrounding the indicium. Such printed matter may not be obscene, defamatory of any person or group, or deceptive, and it must not advocate any unlawful action. The printed matter must not emulate any form of valid indicia or payment for postage.

9.9 Ink

All indicia printed by Generation 1 postage evidencing systems must be printed with USPS-approved fluorescent ink. Failure to use fluorescent ink may lead to the revocation of the user's license. Generation 2 postage evidencing systems must use fluorescence to ensure that the mail is faced during processing, unless otherwise approved by the manager of Postage Technology Management (G043). Generation 2 postage evidencing systems that do not print with fluorescent ink must use an alternative USPS-approved method to ensure that the mail is faced during processing. Approved methods include use of a facing identification mark (FIM) for indicia printed directly on letter-size First-Class Mail (9.10) or printing indicia on USPS-approved labels (9.11). The ink or alternative facing method used is specified in the indicia approval granted by the manager of Postage Technology Management, USPS Headquarters.

9.10 Facing Identification Mark

The facing identification mark (FIM) serves to orient and separate certain types of First-Class Mail during the facing and canceling process. Letter-size First-Class Mail with IBI printed with nonfluorescent ink directly on the envelope by an IBI Meter or a PC Postage system must bear a USPS-approved FIM D unless it is courtesy reply mail. The FIM must meet the format, dimensions, print quality, and placement specified in C100.5.

9.11 Adhesive Label or Tape

When indicia are printed on adhesive tape or on a label for application to the mailpiece, the tape or label used, including the label stock itself as well as the use of fluorescent ink to print indicia and the format and placement of any fluorescence on the label stock, must be approved by the manager of Postage Technology Management, USPS Headquarters. Failure to use the label approved by the USPS for use with the system may result in revocation of the postage evidencing system license. The label must meet the following requirements:

a. The label must be a pressure-sensitive, permanent label. The label is subject to the corresponding standards in C810.6.2 for minimum peel adhesion. The applied label must adhere well enough that it cannot be removed in one piece. A face stock/liner label (also called a ''sandwich'' label) must not be used for printing indicia for postage evidencing.

b. The label must meet the reflectance requirements in C840.5.0.

c. The label must be large enough to contain the entire indicia.

d. Indicia printed on a label must be the same as the indicia approved by the manager of Postage Technology Management for printing directly on an envelope. The label must not include any image or text other than those allowed by USPS regulation, unless approved by the manager of Postage Technology Management.

e. For labels or tapes applied to standard letter-size envelopes and postcards sent as First-Class Mail, the indicia must be printed with fluorescent ink (9.9), or the label must have fluorescent tagging that is sufficient to enable the USPS to face and process the mail, as verified by postal testing of each label design. The fluorescent tagging must meet a minimum fluorescent emission intensity of at least 20 phosphor meter units (PMUs), with a maximum of 70 PMUs. The visible color of the fluorescent tagging may be any color that meets the fluorescence requirements. The fluorescent tagging shall exhibit no noticeable change (i.e., no more than 10%) in its emission when exposed to elevated temperature and high humidity conditions.

f. The label must be placed on the envelope so that the position of the indicium meets the requirements in 9.3.

g. When a label is applied to an envelope that already has a FIM, the label must not cover the existing FIM.

9.12 Complete Date

Indicia must include the month, day, and year for all First-Class Mail, registered, certified, insured, COD, and special handling mail, whether the indicia is printed directly onto the

mailpiece or onto a separate label or tape. For prepaid reply postage see 10.4. The date format must be in accordance with 9.6. The year must be represented by four digits. The date (day, month, or year) may be shown in indicia for Standard Mail and Package Services, except that labels for use with a PC Postage system must include the month, day, and year in all uses.

9.13 Date Accuracy

The date of mailing in the indicium must be the actual date of deposit, except that mail entered after the day's last scheduled collection from the licensing post office or collection box may bear the actual date of entry or the date of the next scheduled collection from the licensing post office or collection box. Authorized dispatch-prepared presort mail accepted after midnight may bear the previous day's date. When the licensee knows the mail will not be tendered to the USPS on the date of mailing shown in the indicium, the user should use a date correction indicium (10.1).

10.0 SPECIAL INDICIA

10.1 Date Correction or Redate

A date correction or redate indicium is required for any mailpiece not deposited by the date of mailing in the indicium as required by 9.13. Only one date correction indicium is permitted on a mailpiece. The date correction or redate indicium may be printed on a USPS-approved label instead of directly on the mailpiece. Formats are as follows:

a. For all postage evidencing systems except PC Postage systems, a date correction must show the actual date of deposit and zero postage value (''0.00''). The date correction is placed on the nonaddress side in the upper right corner or on the address side in the lower left corner of letter-size mail. On flats or parcels, it must be placed next to the original indicium. The mailer may use an ink jet printer to correct the date in the indicia on pieces in barcoded mailings if the text, preceded by two asterisks and showing the actual date of deposit, city, state, and 3-digit ZIP Code of the mailing office, is placed above the address block and below the indicia.

b. For PC Postage systems, a date correction or redate indicium includes only the actual date of deposit and the word ''REDATE,'' instead of a postage value. On letter-size mail, redate indicia must be placed on the nonaddress side at least 3/4 inch from the bottom edge of the mailpiece and not on an envelope flap. On flats or parcels, it must be placed next to the original indicium. The redate or date correction must not include the FIM or the two-dimensional barcode.

10.2 Postage Correction

Indicia for additional postage must be placed on a shortpaid mailpiece to correct postage. The postage correction may be printed on a USPS-approved label instead of directly on the mailpiece and must contain all of the elements required for indicia in 9.5. Formats are as follows:

a. For all postage evidencing systems except for PC Postage systems, the postage correction indicium is placed on the nonaddress side in the upper right corner or on the address side in the lower left corner of letter-size mail. On flats or parcels, it must be placed next to the indicium.

b. For a PC Postage system, the word ''CORRECTION'' must be printed in the postage correction and it must not include a FIM. On letter-size mail, the PC Postage correction indicium must be printed on the nonaddress side at least 3/4 inch from the bottom edge of the mailpiece and not on an envelope flap. On flats or parcels, it must be placed next to the original indicium. The postage correction indicium may be printed on a USPS-approved label instead of directly on the mailpiece.

10.3 APO/FPO Meters

Postage evidencing systems used by military (APO/FPO) post offices must show the military branch and address format for each location (*e.g.*, ''ARMY APO AE 09102''). Exceptions are made only for postage evidencing systems used in fleet post offices on board U.S. naval vessels that may show the name of the ship instead of the standard wording for Navy meters (*e.g.*, ''*USS SARATOGA* (CV–60) 34078–2740'').

10.4 Reply Postage

Indicia generated by any postage evidencing system may be used to prepay reply postage on Express Mail; on Priority Mail when the rate is the same for all zones; on First-Class Mail cards, letters, and flats up to a maximum of 13 ounces; and on single-piece-rate Media Mail and Library Mail, under the following conditions:

a. The postage amount must be enough to prepay the postage in full.

b. Indicia may be printed directly on the mailpiece or on a label and must be positioned in accordance with 9.3. An applied label must meet the standards in 9.11.

c. Indicia used to prepay reply postage, except for IBI generated by a PC Postage system, must not show the date.

d. IBI generated by a PC Postage system to prepay reply postage must show the date the licensee printed the indicium and must include the words ''REPLY POSTAGE.''

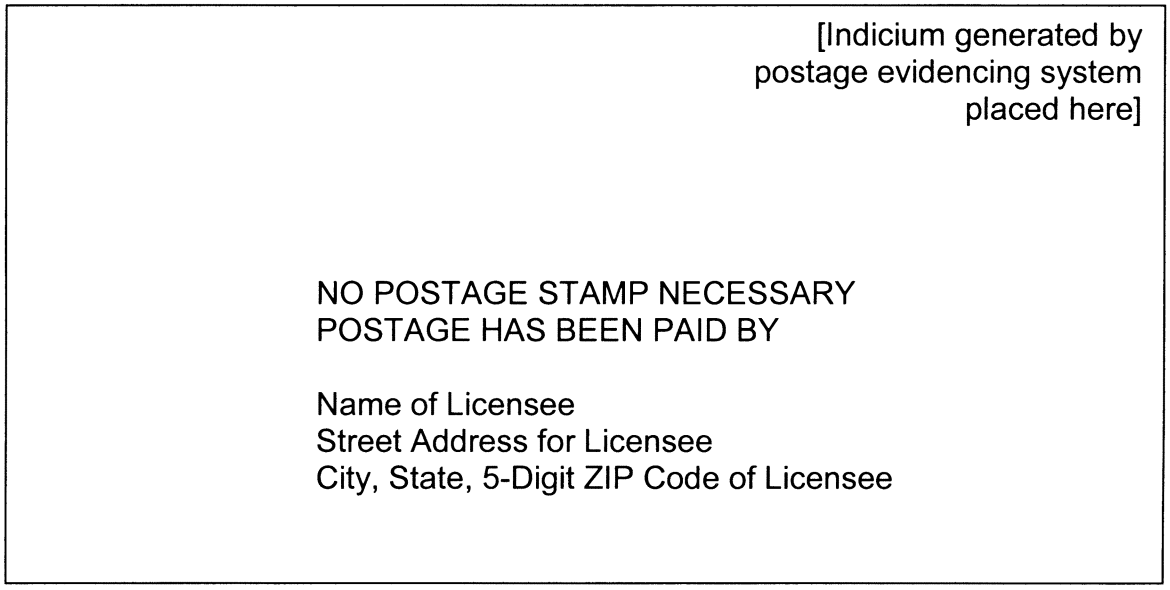
e. The mailpiece must be pre-addressed for return to the licensee. Prepaid reply mail is delivered only to the address of the licensee. When the address is altered, the mail is held for postage.

f. Except for those PC Postage systems with the capability to print an address for the given class or size of mailpiece, the address side of reply mail may be prepared by any photographic, mechanical, or electronic process or combination of such processes (other than handwriting, typewriting, or handstamping). For those PC Postage systems with the capability to print destination addresses for the given size and class of mailpiece, the address must be prepared using the PC Postage system.

g. The words ''NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY'' must be printed above the address.

h. For barcoded letter-size First-Class Mail reply mail for all postage evidencing systems except PC Postage, FIM C is used (C100.5). For PC Postage, FIM D is required for prepaid reply mail when the indicium is printed directly on the mailpiece.

i. The address side must follow the style and content as described in this section and shown in the example below. Nothing may be added except a return address, FIM, or barcode.



11.0 MAILINGS

11.1 Preparation of Metered Mail

Metered mail is subject to the preparation standards that apply to the class of mail and rate claimed.

11.2 Notification of Metered Mailings Presented in Bulk

Mailers who present presorted First-Class Mail, Standard Mail, Parcel Post in bulk quantities, Presorted Bound Printed Matter, Carrier Route Bound Printed Matter, or Presorted Media Mail using metered postage must complete Form 3615. Completion of this form is for record keeping only. If an applicant has a completed Form 3615 on file for other services, notification to present metered mail in bulk is annotated on the existing application. There is no fee for this service.

11.3 Combination

Metered mail may be combined in the same mailing with mail paid by other methods only if authorized by the USPS.

11.4 Where to Deposit

Metered mail may be deposited in the following locations, except that certain special services require that the mail be presented directly to a USPS employee (see S900).

a. The licensee may deposit metered mail at a post office acceptance unit, retail unit, or other location designated by the postmaster of the licensing post office (*i.e.,* the post office shown in the indicia).

b. Metered mail may be deposited in any street collection box under the jurisdiction of the licensing post office, except where specially marked collection boxes are available adjacent to the standard collection box.

c. Express Mail, Priority Mail, and single-piece-rate First-Class Mail may be deposited in any street collection box or other such place where mail is accepted, except where specially marked collection boxes are available adjacent to the standard collection box.

d. Metered mail may be deposited at other than the licensing post office under D072.

e. International mail may be deposited in accordance with the *International Mail Manual* (IMM).

f. A licensed user authorized to use an APO or FPO as the licensing post office may deposit mail only at the licensing APO or FPO.

g. All other licensee's who have USPS approval to use a postage evidencing system outside the country may deposit mail only at their domestic licensing post office.

11.5 Irregularities

The USPS examines metered mail to detect irregularities in preparation and dating.

12.0 AUTHORIZATION TO PRODUCE AND DISTRIBUTE METERS (POSTAGE EVIDENCING SYSTEMS)

Title 39, Code of Federal Regulations, part 501, contains information concerning authorization to produce and distribute postage meters (postage evidencing systems); the suspension and revocation of such authorization; performance standards, test plans, testing, and approval; required production security measures; and standards for distribution and maintenance. Further information may be obtained from the manager of Postage Technology Management, USPS Headquarters (see G043 for address).

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published to include this final rule.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–28011 Filed 11–7–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI107–01–7337a; FRL–7064–4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the minor source/minor modification pre-construction permitting requirements for Wisconsin Electric Power Company's (WE's) Pleasant Prairie Power Plant. The Pleasant Prairie Power Plant is located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted the revised requirements on February 9, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility.

DATES: This rule is effective on January 7, 2002, unless EPA receives relevant

adverse written comments by December 10, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0396.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

Table of Contents

I. What Is the EPA Approving?

We are approving revisions to the minor source/minor modification pre-construction permitting requirements for Wisconsin Electric Power Company's (WE's) Pleasant Prairie Power Plant located at 8000 95th Street, Pleasant Prairie, Wisconsin. WDNR submitted the revised requirements on February 9, 2001, as amendments to its SIP. The WDNR held a public hearing on the proposed revisions on January 22, 2001.

The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility. This SIP revision will not have an adverse effect on air quality.

II. What Are the Changes From Current Rules?

The WDNR has submitted a portion of the Environmental Cooperative Agreement signed by WDNR and WE on February 5, 2001, for approval into the SIP. The Environmental Cooperative Agreement was developed pursuant to the Environmental Cooperative Pilot Program authorized under Section 299.80, Wis. Stats. The Environmental Cooperative Agreement replaces the general construction permit exemption at NR 406.04(2) with the requirements of Section XII.C, Item ''Construction Permit Exemption for Minor Physical or Operational Changes,'' of the Environmental Cooperative Agreement. This change applies only to the Pleasant Prairie Power Plant. The provisions of NR 406.04(2) remain in effect for all other facilities within the State of Wisconsin.

The revisions differ from the current requirements in several significant ways:

1. The current exemption cannot by used by any facility subject to a New Source Performance Standard (NSPS). The Pleasant Prairie Power Plant has two units subject to an NSPS.

2. The current exemption threshold for nitrogen oxide (NO_X) emissions is 5.7 pounds per hour. The revision increases the threshold to 9.0 pounds per hour (approximately 39.42 tons per year) of NO_X.

3. The current regulations at NR 406.04(2) do not require a source to notify WDNR and EPA of changes that qualify for the exemption prior to making the changes or to perform an ambient air quality analysis for those changes. The revisions do require pre-construction notification and an air quality analysis.

III. What Are the Environmental Effects of This Action?

This action will exempt physical changes or changes in the method of operation at the Pleasant Prairie Power Plant with potential emissions less than 9.0 pounds per hour (39.42 tons per year) for sulfur dioxide, carbon monoxide, or NO_X; 5.7 pounds per hour (24.97 tons per year) of particulate matter or volatile organic compounds; 3.4 pounds per hour (14.89 tons per year) of particulate matter less than 10 microns in diameter; and 0.13 pounds per hour (0.57 tons per year) of lead from the requirement to obtain a permit prior to commencing construction on the physical changes or on changes in the method of operation. The current rules contain a similar exemption for certain sources; however, this exemption cannot be used by the Pleasant Prairie Power Plant because it is subject to an NSPS.

The general exemption in the current rule does include a threshold of 5.7 pounds per hour for NO_X because it can be applied in areas with a lower significance threshold such as severe ozone non-attainment areas. For the area in which the Pleasant Prairie Power Plant is located, the significance threshold is 40 tons per year (approximately 9.13 pounds per hour). Although the current rules do require receipt of a construction permit prior to making changes for the Pleasant Prairie Power Plant, issuance of the permit will not result in any additional pollution control requirements or lower emission limitations. The revision is procedural and has no direct impact on emissions.

Under the current rule, an air quality analysis is required for physical changes or changes in the method of operation as part of the pre-construction permitting process to ensure that no applicable standards are violated. The revisions have maintained this requirement. The Pleasant Prairie Power Plant must notify WDNR and EPA of all modifications made under the exemption, and they must include a summary of air quality impacts including any ambient air quality modeling performed as part of that notification.

The applicability provisions and requirements of the current operating permit regulations are unchanged. Any physical change or change in the method of operation at the Pleasant Prairie Power Plant triggering these requirements must obtain the required permit prior to commencing operation.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to the minor source pre-construction permitting requirements for the WE Pleasant Prairie Power Plant, located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by December 10, 2001. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on January 7, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This

action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 7, 2002 unless EPA receives adverse written comments by December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Review of New Sources and Modifications, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 10, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(102) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(102) On February 9, 2001 the Wisconsin Department of Natural Resources submitted a site specific SIP revision in the form of a February 5, 2001 Environmental Cooperative Agreement for incorporation into the federally enforceable State Implementation Plan. The Cooperative Agreement establishes an exemption for pre-construction permitting activities for certain physical changes or changes in the method of operation at the Wisconsin Electric Power Company, Pleasant Prairie Power Plant located at 8000 95th Street, Pleasant Prairie, Wisconsin. This Environmental Cooperative Agreement expires on February 4, 2006.

(i) Incorporation by reference.

The following provisions of the Environmental Cooperative Agreement between the Wisconsin Electric Power Company and the Wisconsin Department of Natural Resources signed on February 5, 2001: The provisions in Section XII.C. Permit Streamlining concerning Construction Permit Exemption for Minor Physical or Operational Changes. These provisions establish a construction permit exemption for minor physical or operational changes at the Wisconsin Electric Power Company Pleasant Prairie Power Plant. This Environmental Cooperative Agreement expires on February 4, 2006.

[FR Doc. 01–27829 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL208–2, IL209–2; FRL–7077–9]

Approval and Promulgation of Implementation Plans; Illinois NO_X Regulations

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving Illinois regulations to control emissions of nitrogen oxides (NO_X). This action approves rules regulating cement kilns and rules regulating industrial boilers and turbines. USEPA is conducting separate rulemaking on a third set of rules regulating electricity generating units. USEPA concludes in this action that these three sets of rules satisfy the requirements known as the NO_X SIP Call.

USEPA proposed this action on June 28, 2001, at 66 FR 34382. USEPA received comments from three commenters. The Illinois Environmental Protection Agency (Illinois EPA) supports USEPA's proposed action and urges USEPA action on rules granting credit for voluntary NO_X emission reductions (''Subpart X''). The Illinois Environmental Regulatory Group (IERG) commented that USEPA may not reach a conclusion on the overall adequacy of Illinois' NO_X regulations unless and until USEPA has completed rulemaking on all of Illinois' NO_X regulations including Subpart X. LTV Steel believes that it should receive a greater number of allowances to reflect a controlled emission rate more consistent with that of other sources, and requests confirmation that emissions monitoring need not begin until May 31, 2003. USEPA responds to Illinois EPA and IERG that we will conduct rulemaking on Subpart X in the near future but we do not agree with IERG that such rulemaking is a prerequisite to judging whether Illinois has an adequate SIP. USEPA responds to LTV Steel that the proposed number of allowances appropriately reflects 60 percent control of that unit. USEPA concurs with a delay for emission monitoring for sources not seeking early reduction credits, but states that the acceptable date is May 1, 2003, not May 31, 2003.

EFFECTIVE DATE: This action will be effective on December 10, 2001.

ADDRESSES: Copies of Illinois' submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What Did USEPA Propose?

Illinois' submittals relating to control of nitrogen oxides (NO_X) emissions include four principal sets of rules, all of which are in Title 35 of the Illinois Administrative Code, Part 217: 1) Subpart W, regulating electric generating units, submitted February 23, 2001, 2) Subpart T, regulating cement kilns, submitted April 9, 2001, 3) Subpart U, regulating other large boilers and turbines, submitted May 1, 2001, and 4) Subpart X, providing credit for voluntary NO_X emission reductions, also submitted May 1, 2001. These submittals also include a variety of definitional rules, codified in Part 211. Separately, on June 18, 2001, Illinois submitted a budget demonstration, demonstrating that the regulations in Subparts T, U, and W of Part 217 are sufficient to achieve the levels of NO_X emissions that USEPA budgeted for Illinois. On June 27, 2001, Illinois further submitted evidence of signed legislation amending the compliance date of these rules to set a fixed compliance date of May 31, 2004.

USEPA published proposed rulemaking on Subpart W on August 31, 2000, at 65 FR 52467. Final rulemaking on Subpart W is published elsewhere in today's **Federal Register**.

On June 28, 2001, at 66 FR 34382, USEPA published action proposing to approve most of the rest of Illinois' NO_X emission control program. Specifically, in that action, USEPA proposed to approve Illinois' rules for cement kilns and for industrial boilers and turbines, proposed to approve Illinois' budget demonstration, and proposed to conclude that Illinois has satisfied the requirements established by USEPA in its rulemaking known as the NO_X SIP Call. USEPA conducted expedited rulemaking on these rules due to their similarity to USEPA's rule recommendations. USEPA proposed to exclude Subpart X from this expedited rulemaking but stated its intention to propose action on Subpart X in the near future.

Illinois' budget demonstration submittal also included clarifications of selected elements of Illinois' rules. Most notably, Illinois clarified two terms used in both its electricity generating unit rules and its industrial boiler and turbine rules for limiting emissions from sources seeking low emitter status. As described in the notice of proposed rulemaking, Illinois clarified that ''potential NO_X mass emissions'' may be defined as the emissions determined either by emissions monitoring according to Part 75 or by multiplying hours of operation times maximum potential hourly emissions. Illinois further clarified that a source that emits more than the allowable number of tons (25 tons or less per ozone season) shall be considered to have exceeded its permissible number of hours of operation and shall lose its low emitter status. USEPA concurred with these interpretations.

II. What Are USEPA's Responses to Comments?

USEPA received three sets of comments, sent by the Illinois Environmental Protection Agency (Illinois EPA) on July 24, 2001, sent by the Illinois Environmental Regulatory Group (IERG) dated July 26, 2001, and sent by LTV Steel Company (''LTV Steel'') also dated July 26, 2001. The following describes these comments and provides USEPA's response.

1. Illinois EPA

Comment: Illinois EPA supports USEPA's proposed rulemaking. Illinois EPA urges action on Subpart X of its NO_X regulations, which provide credit under specified criteria for sources that voluntarily reduce NO_X emissions. Illinois EPA acknowledges USEPA's rationale for using ''streamlined rulemaking on the Illinois rules needed to satisfy USEPA's NO_X SIP Call'' (i.e. rules restricting NO_X emissions from electricity generating units, large industrial boilers and turbines, and cement kilns). At the same time, Illinois EPA comments favorably on USEPA statements that ''Subpart X 'provides for an innovative approach to obtaining voluntary reductions of NO_X emissions'' and that USEPA will work with Illinois EPA on Subpart X ''to arrive at a program that is 'approvable and beneficial to the environment.' ''

Response: USEPA acknowledges Illinois EPA's support for the proposed rulemaking. USEPA concurs that Subpart X is an important set of rules and restates its intention to propose rulemaking on Subpart X in the near future.

2. IERG

Comment: IERG in general ''concurs with the analysis and decisions'' in USEPA's proposed rulemaking. However, IERG comments at length that USEPA ''cannot grant overall approval to the State's submittal unless and until it takes final action approving Subpart X.''

IERG first notes that the state law authorizing NO_X emission regulations dictates that the state's rules shall include provisions for ''voluntary reductions of NO_X emissions * * * to provide additional allowances'' for use by trading program participants. IERG states that if this ''legislative mandate * * * is left unfulfilled, the [Illinois EPA] will be precluded, by Illinois law, from administering the NO_X trading program rules.'' In IERG's view, USEPA recognized this interconnection between state regulations and authorizing state legislation when it insisted that an unacceptable compliance deadline included in the rules pursuant to legislative mandate could not be remedied without amending the legislation. Thus, IERG believes that state legislation makes Subpart X an ''integral part of Illinois' NO_X SIP Call submittal.''

IERG then comments that ''absent Subpart X, or a variant thereof, the State does not have the necessary legal authority to implement the plan.'' Legal authority to adopt and implement a plan is one of the criteria under 40 CFR 51 Appendix V for a state submittal to be complete. Therefore, IERG concludes that ''USEPA's overall approval of Illinois' ozone transport SIP Call submittal, and * * * the legal authority for Illinois to proceed with the implementation of the NO_X trading program regulations, can come to fruition only after Subpart X is approved.'' IERG also notes that while Subpart X is an integral element of Illinois' NO_X SIP Call submittal, ''Subpart X is not an element of Illinois' Chicago area attainment demonstration.''

Response: USEPA agrees in part and disagrees in part with IERG's comments. USEPA agrees that it has not completed rulemaking on the NO_X rules that Illinois has submitted, and USEPA agrees that such rulemaking will not be complete until USEPA conducts rulemakings on Subpart X. USEPA disagrees, however, as to whether rulemaking on Subpart X is a prerequisite for determining whether Illinois has satisfied the NO_X SIP Call.

The Illinois legislation quoted by IERG instructs the applicable state governmental bodies to propose and adopt regulations on NO_X emissions pursuant to USEPA's NO_X SIP Call. The legislation gives more detailed instructions on some points, including instructions to adopt provisions for voluntary reductions of NO_X emissions for allowance generation purposes. The state included such provisions in Subpart X.

USEPA believes that Illinois has fulfilled its obligations under the state legislation that provided for the NO_X regulations. However, USEPA does not share IERG's view that the state legislation dictates USEPA's approach to this rulemaking. Illinois' Environmental Protection Act provides for a variety of regulations, including provisions for water pollution and solid waste regulations and including a range of air pollution regulations such as new source permitting and the Illinois volatile organic compound trading program. Clearly USEPA's action on Illinois' NO_X regulations is not contingent on action on the range of other regulations pursuant to this legislation. All of the new regulations for statewide NO_X emission control are authorized in a single section of the Environmental Protection Act (section 9.9), but this fact does not itself mandate that USEPA conduct rulemaking jointly on all elements provided for in this section.

In judging whether it can conduct rulemaking separately on the different subparts of Illinois' NO_X rules, USEPA instead must focus more on the interrelationship of the actual provisions of these subparts. Subpart T specifies control requirements for cement kilns, which for most sources does not involve tradable allowances. Subpart U, addressing industrial boilers and turbines, identifies the regulated sources, specifies how many allowances will be issued to these sources, and requires these sources to hold allowances at least equivalent to their emissions. Subpart W, addressing electricity generating units, again defines the regulated sources, specifies how many allowances will be issued to these sources, and requires adequate allowance holdings. None of these obligations under any of these subparts are altered by any of the provisions of Subpart X.

Subpart X in essence specifies criteria and procedures by which emission units not subject to Subparts T, U, or W that reduce NO_X emissions may be issued allowances. Issuance of such allowances does not alter the compliance obligations of sources under Subparts T, U, or W. Even if a source regulated under Subparts U or W or possibly T may ultimately take possession of allowances potentially issued under Subpart X, such possession only alters the source's method of compliance and does not alter the basic compliance obligation, in particular the obligation to hold adequate allowances. This rationale is similar to the rationale by which USEPA judges Subparts U and W to be independent: although Subpart U can affect the number of allowances available for purchase by Subpart W sources, the provisions of Subpart U have no effect on the compliance obligations of Subpart W sources. Therefore, USEPA could choose to conduct separate rulemakings on Subpart U and Subpart W. Thus, all four subparts of Part 217 are independent from each other, and for example USEPA may choose to conduct rulemaking on Subpart X separately from its rulemaking on other subparts of Part 217.

From USEPA's perspective, Subpart X is essentially no more or less independent from Subparts U and W than it is from the NO_X control regulations in other Eastern states. While Illinois' focus presumably was on providing an alternative set of allowances for Illinois sources, these allowances would also be available for use by sources in other states subject to the NO_X SIP Call. Thus, rulemaking on Subpart X is no more a prerequisite to approving and implementing Subparts U and W than it is to approving and implementing any other state's NO_X control regulations.

The remaining element of IERG's comment questions whether USEPA may reach a conclusion on Illinois satisfying the requirements of the NO_X SIP Call before completing rulemaking on the entire submittal, in particular before completing rulemaking on Subpart X. USEPA continues to believe that it can judge now whether Illinois has satisfied the existing NO_X SIP Call requirements. Through the rules of Subparts T, U, and W, Illinois has limited emissions from cement kilns, industrial boilers and turbines, and electricity generating units, respectively. Illinois submitted a budget demonstration showing that these three subparts of the Part 217 rules are adequate to assure that NO_X emissions in Illinois remain within levels currently budgeted for the State under the NO_X SIP Call. USEPA proposed to approve this demonstration.

The central requirement of the NO_X SIP Call is for each affected state to assure that NO_X emissions do not exceed the budgeted levels. Illinois' budget demonstration shows that the requirements of Subparts T, U, and W assure achievement of these budgeted

NO_X emission levels in Illinois. That is, even before completing rulemaking on Subpart X, USEPA's rulemaking on Subparts T, U, and W suffice to satisfy fully the existing requirements of the NO_X SIP Call.

As a point of clarification, the existing requirements of the NO_X SIP Call are less stringent than USEPA expects these requirements to become. The difference principally reflects a court remand on the portion of the NO_X SIP Call pertaining to control of stationary internal combustion engines. USEPA labels the existing requirements as Phase I of the NO_X SIP Call, which USEPA expects to amend with Phase II budgets reflecting presumed control of internal combustion engines. USEPA is only evaluating the Illinois regulations against the existing, Phase I requirements; USEPA will obviously evaluate Illinois' regulations with respect to Phase II requirements only after USEPA establishes those requirements.

USEPA's approach for judging satisfaction of existing NO_X SIP Call requirements is the same approach it is using to judge the contribution of these rules toward attaining the ozone standard. Subparts T, U, and W each achieve a quantifiable reduction in NO_X emissions. For purposes of the NO_X SIP Call, USEPA must judge whether the collective reductions suffice to assure that Illinois' NO_X emissions budget is achieved. For purposes of the attainment demonstration, USEPA must judge whether the collective reductions suffice to assure attainment. The intention of Subpart X is neither to increase nor to decrease NO_X emissions in Illinois. Therefore, for both the NO_X SIP Call and the attainment demonstration, USEPA may judge whether the applicable requirements are satisfied without needing first to evaluate Subpart X.

3. LTV Steel

Comment: LTV Steel agrees in general with amending Illinois' NO_X emissions budget to add LTV Steel's Boiler 4B to the list of sources subject to allowance holding requirements. However, LTV Steel believes that a larger quantity of emissions should be budgeted for this boiler. Since Illinois is issuing allowances to each source according to its budgeted emissions, LTV Steel's recommendation is expressed in terms of the number of allowances to be issued to LTV Steel for this boiler.

LTV Steel provides data showing that the proposed budgeted emissions for Boiler 4B ''is equivalent to an emission rate of less than 0.146 lb/mmBTU''. LTV Steel objects that the budgeted emission rate for Boiler 4B ''should not be more stringent than the [0.15 lb/mmBTU emission rate budgeted for electricity generating units]''.

LTV Steel quotes from USEPA's NO_X SIP Call rulemaking of October 27, 1998, as follows: ''EPA determined the aggregate emission levels for large non-electric generating units in each State budget based upon a 60 percent reduction * * *. The 60 percent reduction results in an average emission rate across the region of 0.17 lbs/mmBTU for large non-electric generating units. Therefore, initial unadjusted allocations to existing large non-electric generating units would be based on actual heat input data (in mmBTU) for the units multiplied by an emission rate of 0.17 lb/mmBTU.'' LTV Steel also provides a similar quote from USEPA's rulemaking of January 18, 2000. LTV Steel concludes, based on the 1995 heat input for its Boiler 4B, that the unit should receive allowances for 70 tons per ozone season rather than 60.

Response: USEPA and LTV Steel agree on most points: we agree that Boiler 4B should be subject to requirements as a large boiler, we agree that controlled emissions for this boiler should be calculated consistently with other units, and we agree that 1995 conditions (projected to 2007) should be the basis for the calculations. However, we do not agree on whether the emissions budget for LTV Steel's boiler should be calculated at 0.17 lb/mmBTU or at 60 percent control.

LTV Steel's Boiler 4B burns a combination of natural gas and coke oven gas. Using emissions data collected at the facility, Illinois EPA and USEPA estimate that 60 percent control of this boiler would yield an emission factor slightly below 0.15 lb/mmBTU.

USEPA is addressing emissions budgeted for this unit and not the allocation for the unit; Illinois then has latitude in how it distributes allowance allocations. This distinction appears moot in Illinois because the state's rules provide allowances according to each source's portion of the budget (minus a new source set-aside), but the distinction is key to understanding the statement in USEPA's rulemaking. The quoted statement clearly says that emission budgets for large non-electricity generating units reflect 60 percent control. As quoted by LTV Steel, the rulemaking notice explains that this control level for industrial boilers and turbines on average reflects an emission factor of 0.17 lbs/mmBTU, so a state could at least approximately achieve the budgeted NO_X emission level by issuing allocations at 0.17 lbs/mmBTU. However, states also have the option to allocate allowances according to the 60 percent control level, which is the option Illinois has chosen. Regardless of how the state chooses to distribute allowances, USEPA must calculate the budget adjustment for LTV Steel's Boiler 4B according to 60 percent control.

Illinois' rules provide an allowance allocation to LTV Steel according to this budget adjustment. Therefore, LTV Steel must have an allocation for Boiler 4B that reflects 60 percent control.

The second rulemaking quoted by LTV Steel is USEPA's rulemaking on petitions under Clean Air Act section 126. Besides the fact that this rulemaking does not apply directly to Illinois, the section 126 context differs from the NO_X SIP Call context in a way that makes the quoted statement irrelevant. In its section 126 action, USEPA was responsible for determining allowance allocations. USEPA chose here to issue allowances according to an average emission level, but this choice in no way requires states to use the same approach in allocating allowances under the NO_X SIP Call. In addition, the quoted statements suggest that had USEPA found 60 percent control to reflect a lower average emission rate, USEPA would have allocated allowances according to that lower rate.

As noted in the proposed rulemaking on Illinois' rules, USEPA has provided detailed budget calculations on its web site, at *ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000/*. The spreadsheet for Illinois available at this site clearly calculates the emissions budget for industrial boilers and turbines on the basis of 60 percent control. Thus, USEPA is adjusting Illinois' budget to include LTV Steel's Boiler 4B at a 60 percent control level, which under Illinois' rules will result in LTV Steel receiving an allocation for 60 tons of allowances for each ozone season.

Comment: LTV Steel requested confirmation that the deadline for installing and operating continuous emissions monitoring has been delayed to May 31, 2003.

Response: Illinois' rule at section 217.456(c) subjects sources such as LTV Steel to the monitoring requirements of 40 CFR 96 Subpart H. (Electricity generating units are similarly subject to the 40 CFR 96 Subpart H requirements pursuant to section 217.756(c).) As promulgated, 40 CFR 96.70 requires that monitoring begin at least by May 1, 2002, and earlier if the source seeks early reduction credits. However, a decision by the Court of Appeals for the District of Columbia Circuit has delayed the emissions compliance deadline of

the NO_X SIP Call by one year plus one month.

While 40 CFR 96 Subpart H has not been expressly modified, USEPA recognizes that the change in the compliance deadline warrants a delay in the deadline for emissions monitoring for sources not seeking early reduction credits. The purposes of this monitoring are best achieved by starting at the beginning of the defined ozone season rather than one month later. Therefore, USEPA believes that the Court of Appeals decision warrants a one year delay but not a thirteen month delay in the commencement of emissions monitoring for sources not seeking early reduction credits.

In summary, USEPA affirms that installation and operation of continuous emissions monitoring may be delayed until May 1, 2003, for sources that are not seeking early reduction credits.

III. What Action Is USEPA Taking?

USEPA is taking final action approving Subparts T and U of Part 217 of Title 35 of the Illinois Administrative Code, regulating NO_X emissions from cement kilns and industrial boilers and turbines, respectively. This approval reflects selected rule interpretations described in the notice of proposed rulemaking. USEPA is making two minor amendments to the budget as requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by University of Illinois from the inventory of large boilers and turbines. By separate action today, USEPA is approving Subpart W, regulating NO_X emissions from electricity generating units.

Illinois' budget demonstration shows that these three sets of regulations provide sufficient limitations on NO_X emissions in the state to satisfy the existing requirements of USEPA's NO_X SIP Call. USEPA is approving this budget demonstration. With this approval and the approval of the three relevant sets of regulations, USEPA concludes that Illinois has fully satisfied current (''Phase I'') requirements under the NO_X SIP Call.

USEPA wishes to clarify its views on one aspect of compliance accounting under Illinois' rule. USEPA's administration of a multi-state trading program requires that the states have consistent compliance accounting procedures. USEPA will be using procedures in which compliance is assessed on a unit-by-unit basis. Illinois' rules for industrial boilers and turbines are somewhat unclear on this point: multiple rule paragraphs indicate that compliance is assessed on a unit-by-unit basis, and yet Section 217.456 (d)(1) suggests that the source may be in compliance if the source has adequate allowances on a source-wide basis.

Illinois provided clarification on this point in a letter to USEPA dated September 20, 2001. Illinois specified that its rules must be interpreted to require compliance on a unit-by-unit basis. Consequently, if a source holds a sufficient total number of allowances but misdistributes these allowances such that one or more unit accounts (supplemented by available allowances from the source's overdraft account) hold insufficient allowances, those units will be in violation. Each violating unit will be subject to the 3 to 1 deduction of allowances pursuant to Illinois' section 217.456 (f)(5) and USEPA's 40 CFR 96.54 (d)(1). USEPA concurs with and approves this interpretation of Illinois' rules.

The regulations approved here, along with the regulations governing electricity generating units, are an important part of Illinois' attainment demonstration for the Chicago area. USEPA finds these regulations creditable for this purpose.

USEPA is also approving all the definitions of Part 211 submitted in conjunction with the Subpart T and Subpart U submittals. These part 211 rules provide a variety of definitions of terms used in part 217 that are generally quite similar to USEPA's recommended definitions. These rules also include a definition of the term ''source'' that brings that definition into conformance with state law and USEPA recommendations.

Because USEPA has not approved Subpart X, allowances may not be issued for sources that voluntarily reduce NO_X emissions pursuant to these rules. In addition, provisions in Subpart U implying creditability of emission reductions pursuant to Subpart X are inoperative prior to approval of Subpart X.

In order to fulfill its obligation for rulemaking on the entire Illinois submittal, USEPA must conduct rulemaking on Subpart X. While USEPA is taking no action today on Subpart X, USEPA intends to conduct rulemaking on Subpart X in the near future.

USEPA has reviewed the completeness of Illinois' submittals of February 23, 2001, April 9, 2001, May 1, 2001, and June 18, 2001. USEPA concludes that these submittals are complete and represent a complete response to Phase I of USEPA's NO_X SIP Call. Consequently, USEPA concludes that Illinois has remedied the prior deficiency identified on December 26, 2000 (65 FR 81366), namely Illinois' prior failure to submit a SIP in response to the NO_X SIP Call. USEPA's December 2000 finding started an 18-month clock for the mandatory imposition of sanctions and the obligation for USEPA to promulgate a FIP within 24 months. Today's action terminates both the sanctions clock and USEPA's FIP obligation.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior

existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Jo Lynn Traub,

Acting Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(159), to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(159) On April 9, 2001, David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency, submitted rules regulating NO_X emissions from cement kilns. On May 1, 2001, Mr. Kolaz submitted rules regulating NO_X emissions from industrial boilers and turbines and requesting two minor revisions to the Illinois NO_X emissions budget. On June 18, 2001, Mr. Kolaz submitted a demonstration that Illinois' regulations were sufficient to assure that NO_X emissions in Illinois would be reduced to the level budgeted for the state by USEPA. On September 20, 2001, Mr. Kolaz sent a letter clarifying that Illinois' rules for industrial boilers and turbines require compliance on a unit-by-unit basis.

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Definitions, sections 211.955, 211.960, 211.1120, 211.3483, 211.3485, 211.3487, 211.3780, 211.5015, and 211.5020, published at 25 Ill. Reg. 4582, effective March 15, 2001.

(B) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart A, Section 217.104, Incorporations by Reference, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(C) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart T, Cement Kilns, sections 217.400, 217.400, 217.402, 217.404, 217.406, 217.408, and 217.410, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(D) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Sections 211.4067 and 211.6130, published at 25 Ill. Reg. 5900, effective April 17, 2001.

(E) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart U, NO_X Control and Trading Program for Specified NO_X Generating Units, sections 217.450, 217.452, 217.454, 217.456, 217.458, 217.460, 217.462, 217.464, 217.466, 217.468, 217.470, 217.472, 217.474, 217.476, 217.478, 217.480 and 217.482, published at 25 Ill. Reg. 5914, effective April 17, 2001.

(ii) Additional material.

(A) Letter dated June 18, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Cheryl Newton, United States Environmental Protection Agency.

(B) Letter dated September 20, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Bharat Mathur, United States Environmental Protection Agency.

3. Section 52.726 is amended by adding paragraph (cc) to read as follows:

§ 52.726 Control strategy: ozone.

* * * * *

(cc) Approval—Illinois has adopted and USEPA has approved sufficient NO_X emission regulations to assure that it will achieve the level of NO_X emissions budgeted for the State by USEPA. USEPA has made two minor budget revisions requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by the University of Illinois from the inventory of large NO_X sources.

[FR Doc. 01–27933 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL203–3; FRL–7077–8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 23, 2001, Illinois submitted a rule to control emissions of oxides of nitrogen (NO_X) from electric generating units (EGU). Illinois' EGU rule represents a key portion of the State's response to EPA's October 27, 1998 NO_X State Implementation Plan (SIP) Call. Illinois adopted other rules to regulate NO_X emissions from non-EGU and cement kilns and these rules are addressed in other rulemakings. In EPA's proposed rule on the adequacy of Illinois' EGU rule, we noted that the rule could not be approved unless the State changed a compliance delay provision to meet the provisions of compliance in the EPA model rule. The State made this change, as well as other changes we recommended, and EPA is taking this final action to approve the rule. The rule also provides NO_X emission reductions to support attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area.

DATES: This final rule is effective December 10, 2001.

ADDRESSES: You may obtain copies of the State Implementation Plan revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604, Telephone Number: (312) 886–6084, E-Mail Address: paskevicz.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''you'' and ''me'' refer to the reader of this final rule and to sources subject to the State rule, and the terms ''we'', ''us'', or ''our'' refers to EPA.

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I. Background

A. What Clean Air Act Requirements Apply to or Led to the State's Submittal of the NO_X Emission Control Rule?

The Clean Air Act (Act or CAA) as amended in 1990 requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain air pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) or 120 parts per billion (ppb). 44 FR 8202 (February 8, 1979).

Ground-level ozone is generally not directly emitted by sources. Rather, volatile organic compounds (VOC) and NO_X, both emitted by a wide variety of sources, react in the presence of sunlight to form additional pollutants, including ozone. NO_X and VOC are referred to as precursors of ozone.

The Act, as amended in 1990, requires EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment with the ozone NAAQS is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Moderate areas were subject to more stringent planning and control requirements but were provided more time to attain the ozone standard, until November 15, 1996. Severe and extreme areas are subject to even more stringent planning and control requirements but are also provided more time to attain the standard. Severe areas are required to attain the ozone NAAQS by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for the 1987 through 1989 period.

The Chicago-Gary-Lake County ozone nonattainment area was classified as severe-17 and its attainment date is November 15, 2007. The Chicago-Gary-Lake County ozone nonattainment area is defined (40 CFR 81.314 and 81.315) to contain Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships only), Kane, Kendall (Oswego Township only), Lake, McHenry, and Will Counties in Illinois, and Lake and Porter Counties in Indiana.

The Act requires moderate and above ozone nonattainment areas (including severe ozone nonattainment areas) to be addressed in ozone attainment demonstrations, including adopted emission control regulations sufficient to achieve attainment of the ozone NAAQS by the applicable ozone attainment dates. The requirements of the Act for ozone attainment demonstrations for moderate and above ozone attainment areas are determined by considering several sections of the Act. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment dates. Section 172(c)(1) of the Act requires the implementation of all reasonably available control measures (including reasonably available control technology [RACT]) and requires the SIP to provide for sufficient annual reductions in emissions of VOC and NO_X as necessary to attain the ozone NAAQS by the applicable attainment dates. Sections 182(c)(2) and (d) required SIP revision submissions by November 15, 1994 for serious and severe ozone nonattainment areas to demonstrate how the areas would attain the 1-hour standard and

how they would achieve rate-of-progress (ROP) reductions in VOC emissions of 9 percent for each 3-year period until the date of attainment. (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions to achieve ROP.) Section 182(c)(2)(A) requires the ozone attainment demonstrations for serious and above ozone nonattainment areas to be based on the use of photochemical grid modeling or on other analytical methods determined to be at least as effective. The attainment demonstrations based on photochemical grid modeling can address the emission impacts of both VOC and NO_X. The NO_X emission control regulations addressed in this rulemaking are, in part, intended to meet the requirements for the attainment demonstrations for the Chicago-Gary-Lake County ozone nonattainment area.

On October 27, 1998, the EPA promulgated a NO_X SIP Call for a number of States, including the State of Illinois. The NO_X SIP Call requires the subject States to develop NO_X emission control regulations sufficient to provide for a prescribed NO_X emission budget in 2007, and is further discussed below. These NO_X emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. The rule also provides NO_X emission reductions to support attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. EPA promulgated the NO_X SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance or attainment of a standard by any other State with respect to any NAAQS. Section 110(k)(5) authorizes the EPA to find that a SIP is substantially inadequate to meet any CAA requirement when appropriate, and, based on such finding, to then require the State to submit a SIP revision within a specified time to correct such inadequacies.

B. What Analyses and EPA Rulemaking Actions Support the Need for the NO_X Emission Control Rule?

The State of Illinois has the primary responsibility under the CAA for ensuring that Illinois meets the ozone NAAQS and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for attainment, maintenance, and enforcement of the NAAQS within the State. The SIP for ozone must meet the CAA requirements discussed above, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the EPA for approval. A number of analyses and EPA rulemaking actions have affected the SIP revisions needed for the Chicago-Gary-Lake County ozone nonattainment area as discussed below.

The States of Illinois, Indiana, Wisconsin, and Michigan have worked cooperatively to provide the EPA with an ozone attainment demonstration for the Lake Michigan area, which includes the Chicago-Gary-Lake County ozone nonattainment area. Analyses conducted to support this ozone attainment demonstration, as submitted in 1994 and supplemented in April 1998, indicate that reductions in upwind NO_X emissions are needed to reduce the transport of ozone into these nonattainment areas.

On March 2, 1995, Mary D. Nichols, Assistant Administrator for EPA's Air and Radiation Division, published a memorandum titled ''Ozone Attainment Demonstrations.'' In this memorandum, the EPA recognized that the development of the necessary technical information, as well as the emission control measures necessary to achieve the attainment of the ozone NAAQS had been difficult for the States affected by significant ozone transport. EPA established a two-phase process for States with serious and severe ozone nonattainment areas to develop ozone attainment SIPs. Under Phase I, States were required to complete 1994 SIP requirements (with the exception of final ozone attainment demonstrations), submit regulations sufficient to meet ROP requirements through 1999, and submit initial ozone modeling analyses, including preliminary ozone attainment demonstrations based on assumed reductions in upwind ozone precursor emissions. Phase II called for a two-year consultative process to assess regional strategies to address ozone transport in the eastern United States and required submittal of all remaining ROP submittals to cover ROP through the attainment dates, final attainment demonstrations to address the emission reduction requirements resulting from the two-year consultative process and any additional rules and emission controls needed to attain the ozone standard, and any regional controls needed for attainment by all areas in the eastern half of the United States.

In response to the problem of ozone transport, the Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to the March 2, 1995 EPA memorandum, the Ozone Transport Assessment Group (OTAG), a partnership among EPA, the 36 eastern States and the District of Columbia, and industrial, academic, and environmental groups, was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was given the responsibility for conducting the two-years of analyses envisioned in the March 2, 1995, EPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the EPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_X emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, EPA issued the NO_X SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_X SIP Call, EPA determined that sources and emitting activities in 23 jurisdictions[1] emit NO_X in amounts that ''significantly contribute'' to ozone nonattainment or interfere with maintenance of the 1-hour ozone NAAQS in one or more downwind areas in violation of CAA section 110(a)(2)(D)(i)(I). EPA identified NO_X emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_X emission budgets for each affected jurisdiction for 2007 based on the possible cost-effective NO_X emission reductions. The source sectors include nonroad mobile, highway mobile, area, electrical generating units (EGUs) (including stationary boilers and turbines, which may generate steam for industrial processes but whose primary purpose is to generate electricity for sale to the electrical grid), and major non-

[1]Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

EGU stationary point sources (process stationary boilers or turbines, whose primary purpose is to generate steam for industrial processes). EPA established recommended NO_X emissions caps for large EGUs (serving a generator greater than 25 megawatts) and for large non-EGUs (maximum design heat input of greater than 250 million British thermal units [Btu] per hour [mmBtu/hr]). EPA determined that significant NO_X reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds NO_X/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_X emissions from large non-EGUs; a 30 percent reduction of NO_X emissions from large cement kilns; and a 90 percent reduction of NO_X emissions from large stationary internal combustion engines not serving electricity generators. The 2007 state-wide NO_X emission budgets were established by jurisdiction, in part, by assuming these levels of NO_X emission controls coupled with NO_X emissions projected by source sector to 2007.

Although the state-wide NO_X emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_X SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_X emission budgets. It does not require the States to adopt the specific NO_X emission rates assumed by the EPA in establishing the NO_X emission budgets. The NO_X SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_X state-wide emission budget. The NO_X SIP Call encourages the States to adopt a NO_X cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_X trading program that the EPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO_X SIP Call.

On April 30, 1998, and December 26, 2000, the State of Illinois submitted a major revision of the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area. In that attainment demonstration revision, the State demonstrated that significant reductions in transported ozone and NO_X would be necessary to achieve attainment of the 1-hour ozone standard in the nonattainment area. Illinois committed to complete the ozone attainment demonstration and to adopt sufficient local and regional controls as needed to demonstrate attainment of the ozone standard and to submit the final attainment demonstration and adopted regulations to the EPA by December 2000. The EPA proposed to conditionally approve the 1-hour attainment demonstration based, in part, on the State's commitment to adopt and submit a final attainment demonstration and a post-1999 ROP plan, including the necessary State emission control regulations, by December 31, 2000. 64 FR 70496. The NO_X regulations reviewed in this rule are, in part, intended to meet part of the State's commitment to complete the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area.

C. What Have Been the Court Rulings Regarding EPA's NO_X Emission Control Rules?

When the EPA published the NO_X SIP Call on October 27, 1998, a number of States and various industry groups filed petitions challenging the SIP Call before the United States Court of Appeals for the District of Columbia Circuit. See *Michigan* v. *EPA*, 213 F.3d 663(D.C. Cir. 2000). The Court, on May 25, 1999, stayed the obligation of States to submit SIPs in response to the NO_X SIP Call rule. Subsequently, on March 3, 2000, the Court upheld most of the NO_X SIP Call. The Court, however, vacated the SIP Call as it applied to Missouri and Georgia and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The Court also vacated the rule as it applied to Wisconsin because EPA had not made a showing that sources in Wisconsin significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in any other State. Finally, the Court also remanded two issues concerning a limited portion of the NO_X emission budgets. On June 22, 2000, the Court removed the stay of States' obligation to submit SIPs in response to the NO_X SIP Call and denied petitioners' motions for rehearing and rehearing en banc. In removing the stay, the Court provided that EPA should allow 128 days for States to submit SIPs. Thus, SIPs were to be submitted to us by October 30, 2000.

II. Summary of the State Submittal

A. When Was the State NO_X EGU Emission Control Rule Submitted to the EPA?

On June 29, 2000, the Illinois Environmental Protection Agency (IEPA) submitted a draft NO_X emission control rule to the EPA for pre-adoption review.

On July 18, 2000, EPA received a letter from David J. Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency, which contained a number of documents, including the draft rule submitted on June 29, 2000, along with additional documentation for the draft rule. The letter included a request from the Bureau Chief to process the submittal in parallel (i.e., parallel processing) to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State.

Parallel processing allows a State to submit a plan for approval prior to actual adoption by the State. 47 FR 27073 (June 23, 1982) A submittal for parallel processing must include the following three items: a letter from the State requesting parallel processing; a schedule for final adoption or issuance of the plan; and a copy of the proposed regulation or document. Illinois submitted these three items of information in the letter dated July 18, 2000, from the Bureau Chief. The Bureau Chief is the authorized representative for the State to submit SIP revisions. The letter asks that EPA parallel process the submittal, and it includes milestones leading to final adoption of the plan. The milestones were acceptable to EPA as a schedule, however the end date of final approval (final rule adoption) by the Illinois Pollution Control Board (IPCB) could not be precisely established. Enclosed with the letter was a copy of the draft NO_X rule along with a ''Statement of Reasons'' provided to the IPCB by the Legal Counsel of the Illinois Environmental Protection Agency to support the adoption of the rule.

On December 27, 2000, EPA received a final rule, Illinois Administrative Code 217, Subpart W, NO_X Trading Program for Electrical Generating Units. This rule was made effective as of December 21, 2000, following approval by the IPCB. The rule included changes recommended by EPA with the exception of the portion of the rule (section 217.756(d)(3)) which contained unapprovable compliance delay language. The Administrative Register version of this package, containing a technical support document, supplemental information, hearing comments and other information such as the ozone attainment demonstration was submitted in a letter dated February 23, 2001. This package contained compliance delay language as the only nonapprovable element of the submittal. The compliance delay language provided for the State to delay compliance with the rule to the year following such time that all other States

in EPA Region 5, and States contiguous with the State of Illinois, have adopted NO_X regulations and EPA has approved these State's NO_X plans.

However, in a June 27, 2001, letter from the Chief, Bureau of Air, Illinois Environmental Protection Agency, EPA was informed that on June 22, 2001, the Governor signed into law House Bill 1599. This new Illinois law specifies a final compliance date of May 31, 2004, and satisfies EPA concerns expressed in our August 31, 2000, proposal.

B. What Are the Basic Components of the State's Final Rule?

The State based the rule primarily on EPA's part 96 Trading Rule. Many sections of part 96 are incorporated by reference (IBR) into the rule. In addition to IBR of portions of 40 CFR part 96, Illinois' NO_X rule also includes IBR of portions of 40 CFR parts 60, 72, 75, and 76. Section 217.104 of the Illinois rule identifies the CFR parts and sections included in the IBR. Table 1 identifies the Volume 40 CFR parts and sections included by IBR in Illinois' NO_X rule.

TABLE 1.—40 CFR PARTS AND SECTIONS INCORPORATED BY REFERENCE IN ILLINOIS' EGU NO_X RULE

40 CFR part and section	Section title/subject
60; Appendix A	Method 7 (The phenol disulfonic acid method).
72; All Sections	Permits regulation.
75; All Sections	Continuous emission monitoring.
76; All Sections	Acid rain nitrogen oxides emission reduction program.
96; Subpart A:	
96.1	Purpose.
96.2	Definitions.
96.3	Measurements, abbreviations, and acronyms.
96.5	Retired unit exemptions.
96.6	Standard requirements.
96.7	Computation of time.
96; Subpart B:	
96.10	Authorization and responsibility of the NO_X authorized account representative.
96.11	Alternate authorized account representative.
96.12	Changing the authorized account representative and alternate authorized account representative.
96.13	Account certificate of representation.
96.14	Objections concerning authorized account representative.
96; Subpart D:	
96.30	Compliance certification report.
96.31	Permitting authority's and Administrator's action on compliance certification.
96; Subpart F:	
96.50	NO_X Allowance Tracking System accounts.
96.51	Establishment of accounts.
96.52	NO_X Allowance Tracking System, lists responsibilities of NO_X authorized account representative.
96.53	Recordation of NO_X allowance allocations.
96.54	Compliance.
96.55(a)	Banking.
96.55(b)	Banking.
96.56	Account error.
96.57	Closing of general accounts.
96; Subpart G:	
96.60	NO_X allowance transfers.
96.61	EPA recordation.
96.62	Notification.
96; Subpart H:	
96.70	Monitoring and reporting, General requirements.
96.71	Initial certification and recertification procedures.
96.72	Out of control periods.
96.73	Notifications.
96.74	Recordkeeping and reporting.
96.75	Petitions.
96.76	Additional requirements to provide heat input data for allocations purposes.

In addition to the IBR portion, the rule contains a number of other subparts and sections. Table 2 lists these subparts and sections. Some of these were derived from federal regulations. (Illinois attempted to either revise the federal regulations to more abbreviated versions or to revise the federal regulations to make them more compatible with existing State regulations.) Where appropriate, the final column of Table 2 notes the federal regulation(s) from which the State regulation was derived or notes the effect of the State regulation relative to related federal regulations.

TABLE 2.—NON-IBR PORTIONS OF ILLINOIS' NO_X RULE

Subpart/Section	Title	Comparable Federal Regulation/Note
Subpart B/Section 211	Definitions	Replace Some IBR Definitions.
Subpart A	General Provisions	
Section 217.100	Scope and organization	
Section 217.101	Measurement Methods	
Section 217.102	Abbreviations and Units	Replaces some abbreviations included by IBR.
Section 217.104	Incorporations by Reference	
Subpart W	NO_X Trading Program for Electrical Generating Units.	
Section 217.750	Purpose	
Section 217.752	Severability	
Section 217.754	Applicability	See 40 CFR 96.4.
Section 217.756	Compliance Requirements	
Section 217.756(b)	Permit requirements	
Section 217.756(c)	Monitoring requirements	
Section 217.756(d)	NO_X requirements	
Section 217.756(e)	Recordkeeping and reporting requirements	
Section 217.756(f)	Liability	
Section 217.758	Permitting Requirements	
Section 217.758(a)	Budget permit requirements	See 40 CFR 96.20 and 96.21.
Section 217.758(b)	Budget permit applications	See 40 CFR 96.22 and 96.23.
Section 217.760	NO_X Trading Budget	See 40 CFR 96.40, 96.41, and 96.42.
Section 217.762	Methodology for Calculating NO_X Allocations for Budget Electrical Generating Units.	See 40 CFR 96.42.
Section 217.764	NO_X Allocations for Budget EGUs	See 40 CFR 96.42.
Section 217.768	New Source Set-Asides for ''New'' Budget EGUs	
Section 217.770	Early Reduction Credits for Budget EGUs	See 40 CFR 96.55.
Section 217.774	Opt-in Units	
Section 217.776	Opt-In Process	See 40 CFR 96.84.
Section 217.778	Budget Opt-in Units: Withdrawal from NO_X Trading Program.	
Section 217.780	Opt-in Units: Change in Regulatory Status	
Section 217.782	Allowance Allocations to Budget Opt-In Units	
Appendix D	Non-Electrical Generating Units	
Appendix F	Allowances for Electrical Generating Units	

Using information provided by the IEPA to the IPCB in support of the adoption of this rule, the following summarizes several of the various rule sections listed in Table 2 above.

Subpart B, Section 211

A number of new definitions are added to an existing part 211 of Illinois' air pollution rules. Definitions of the following terms are added: Allowance; Combined Cycle System; Combustion Turbine; Common Commercial Operation; Commence Operation; Common Stack; Control Period; Excess Emissions; Fossil Fuel; Fossil Fuel-Fired; Generator; Heat Input; Heat Input Rate; Nameplate Capacity; Potential Electrical Output Capacity; and Repowering. The specifics of these definitions do affect the completeness and enforceability of the rule(s) that uses them. Therefore, they have been compared to definitions contained in 40 CFR parts 96 and 97 as part of the review conducted for this final rulemaking. EPA concurs with these definitions.

Subpart A

Section 217.100 Scope and Organization

This section specifies the purpose of the State's NO_X rule.

Section 217.101 Measurement Methods

This section states that the measurement of NO_X emissions at sources and facilities covered by the rule shall be conducted according to: (a) the phenol disulfonic acid method (40 CFR part 60, appendix A, Method 7 (1999)); and continuous emissions monitoring pursuant to 40 CFR part 75 (1999).

Section 217.102 Abbreviations and Units

Like definitions of terms, abbreviation definitions can affect the completeness and enforceability of a rule, and the abbreviations added to this rule have been reviewed from this standpoint. It should be noted that part 211 of Illinois' air pollution rules also contains a number of defined abbreviations. The abbreviations added in section 217.102 are specific to the NO_X rule and do not necessarily apply to other Illinois air pollution control rules.

Section 217.104

As noted above, the State amended section 217.104 (to add this section to existing Illinois rules) to add portions of 40 CFR part 96 and 40 CFR parts 72, 75, and 76 (see Table 1 above) to the documents that have been incorporated into Illinois' rules by reference. IBR documents are an integral part of Illinois' rules and are enforceable in the same manner as one would enforce any State rule.

Trading Program for Electrical Generating Units

Section 217.754 Applicability

This section addresses the applicability of the State's NO_X trading

program. Subsection (a) provides that the NO_X trading rule and emissions cap applies to all fossil fuel-fired stationary boilers, combustion turbines or combined cycle systems, serving a generator which has a nameplate capacity exceeding 25 megawatts (MWe) if the generated electricity is sold. This section also applies to fossil fuel-fired units with a maximum design heat input rate of greater than 250 mmBtu/hour and serving smaller generators under certain specified circumstances, including the condition that a served generator is larger than 50 percent of a unit's potential electrical output capacity (such a unit would also be classified as an electrical generating unit subject to the rule and the trading program requirements). Subsection (b) of this section provides that units meeting the above criteria are subject to the emission limits of the NO_X Trading Program.

Subsection (c) provides an exemption for low-emitters, such as units that burn natural gas and/or fuel oil exclusively and have potential NO_X emission rates of 25 tons or less during the control period. The owner or operator of such a unit may choose to get an operating permit that limits emissions to this lower level through federally enforceable conditions as specified in this subsection. Owners and operators seeking low emitter status affect the emission allowances covered in the NO_X Trading Program.

Further interpretation of this section is contained in a June 18, 2001, letter from IEPA addressing low-emitter status. The intent of Illinois' low emitter status provisions in Subpart U (§ 217.472) and Subpart W (§ 217.754 (c)) is to provide a unit two alternatives to qualify for low emitter status. The first alternative requires a unit to take permit limits on its operating hours and potential NO_X mass emissions in order to ensure that the unit's potential NO_X mass emissions do not exceed 25 tons of NO_X in an ozone season. The operating hours restriction follows the procedures in EPA's model rule, 40 CFR 96.4(b), and is calculated using a default NO_X emissions rate and the unit's maximum potential hourly heat input.

The second alternative allows a unit with monitored ozone season NO_X emissions of 25 tons or less, as monitored according to part 75, to qualify for low emitter status. Under this alternative, a unit must again take permit limits restricting ozone season operating hours and potential NO_X mass emissions during the ozone season to 25 tons or less.

Also, the State made clearer, in its letter, the meaning of the term ''potential'' in these provisions. In Subpart W, section 217.754(c), this term is first used in paragraph (c)(1)(B), stating that the source's permit must ''Limit the EGU's potential NO_X mass emissions * * * to 25 tons or less.'' Under paragraph (c)(1)(D), the permit must in addition ''Require that the EGU's potential NO_X mass emissions be calculated [either by monitoring according to 40 CFR Part 75 or by multiplying maximum potential hourly emissions times hours of operation].'' Consequently, ''potential emissions'' must be interpreted to mean the emissions determined according to whichever method is used under section 217.754(c)(1)(D). Since the measurements under 40 CFR Part 75 measure actual emissions, a low emitting source using such monitoring would rely largely on actual emissions data to evaluate compliance with the permit limit on potential NO_X mass emissions.

The contents of this letter and an analysis was published in the proposed rule dated June 28, 2001 (66 FR 34382), because similar provisions are found in Subpart U, Section 217.472(a). The public comment period closed for the June 28, 2001 proposed rule on July 30, 2001. No adverse comments were received on Illinois' low-emitter status provisions. EPA believes the explanation provided by the State regarding low-emitter status adequately addresses EPA's concerns.

Section 217.756 Compliance Requirements

This section specifies the compliance requirements for EGUs subject to the NO_X Trading Program (budget EGUs). Owners or operators of each source that has one or more budget EGUs must submit an application meeting the requirements of section 217.758 for an emissions budget permit from the IEPA. The budget permit must specify federally enforceable conditions covering the NO_X Trading Program and must satisfy all other permitting requirements in Illinois' air quality rules. The application for a budget permit is subject to specified timing requirements.

Subject budget EGUs must meet specified monitoring requirements, including continuous emissions monitoring. An account representative for a subject budget EGU must comply with specified monitoring compliance certification and reporting requirements of 40 CFR part 96, subpart H. The monitoring results will be used to certify compliance with the budget emissions limitations.

Subsection (d) requires the account representative for a budget EGU to hold sufficient emission allowances available for compliance deduction in the budget EGU's compliance account or the source's overdraft account by November 30 of each year, starting in the compliance year, to account for NO_X emissions. Only a certain number of allowances will be given to a budget EGU each control period (May 1 through September 30) based on an established State-wide NO_X emissions cap and an allowance distribution system devised cooperatively by the State and the affected sources. Budget EGUs can not use an allowance prior to the control period in which it is allocated by the State.

Subsection (e) provides the recordkeeping requirements for the budget EGUs. All emission monitoring information must be recorded and maintained in accordance with 40 CFR part 96, subpart H. Documents and records must be kept and must be made available for inspection upon request for 5 years unless a different period is specified elsewhere (under other parts of these SIP rules).

Subsection (f) contains the provisions governing liability of budget EGUs, their owner and operators, and account representatives. The owner and account representative of one budget EGU are not liable for any violation of any other budget EGU with which they are not affiliated, except with respect to requirements for EGUs with a common stack.

Section 217.758 Permitting Requirements

The budget permit of a budget EGU must contain federally enforceable conditions that apply to the unit and provide that the budget permit is a complete and separable portion of the source's entire permit.

Subsection (a) prohibits the issuance of a budget permit and the establishment of a NO_X emissions allowance until the IEPA and the EPA have received a complete ''account certificate of representation'' from the budget EGU's account representative, and sets forth the timing for submitting a budget permit application where one or more of the budget EGUs are subject to the requirements of section 39.5 of the Illinois Clean Air Act Permit Program. Budget EGUs not subject to these requirements are also required to obtain a permit with federally enforceable conditions.

Section 217.760 The NO_X Trading Budget

Subsection (a) provides that the total base NO_X trading budget available statewide for allowance allocations for each control period (May 1 through September 30) is 30,701 tons (30,701 allowances). This budget may be increased or decreased under various circumstances, such as the opt-in of non-subject sources or the opt-out of exempted low-emitter sources. This subsection also provides that for the years of 2004 through 2006, 5 percent of the 30,701 allowances will be allocated to a new source set-aside. For the years 2007 and thereafter, the new source set-aside will be reduced to 2 percent of the 30,701 allowances.

Subsection (b) authorizes the IEPA to adjust the total EGU trading budget available for allocation. This is done to remove allowances for low-emitters opting to become exempt from some provisions of the NO_X Trading Program.

Subsection (c) authorizes the IEPA to adjust the total base EGU trading budget pro-rata if the EPA subsequently makes adjustments in the EGU budget.

Section 217.762 Methodology for Calculating NO_X Allocations for Budget Electrical Generating Units (EGUs)

The methodology used to calculate allocations (not the total state-wide emission cap) is based on the emission rate limit and a unit's control period heat input. Appendix F of the rule lists the budget EGUs and their associated allowances. For budget EGUs, including opt-ins, not listed in Appendix F, the limiting emission rate used in the calculation of allowances is the more stringent of 0.15 pounds NO_X/million Btu heat input or the permitted NO_X emission rate, but never less than 0.055 pounds NO_X per million Btu heat input.

Subsection (b) sets forth how the heat input is to be determined for the control period. This heat input for each budget EGU is used along with the emission limit to determine the NO_X allowance for the EGU.

Section 217.764 NO_X Allocations for Budget EGUs

This section sets forth, for each control period, the allowance allocations for budget EGUs. The allocations involve a ''fixed/flex'' approach from 2007 through 2010 and a ''100 percent flex'' approach in 2011 and thereafter (consult this section of the rule for the details of these approaches). The allocations for 2004 through 2006 are specified in subsection (a). Other subsections provide for allocations of allowances to budget EGUs for follow-on years out to 2011.

Section 217.768 New Source Set-Aside for ''New'' Budget EGUs

This section sets aside allowances for new sources as noted above. During the period of 2004 through 2006, any allowances that are not allocated to new sources will be allocated to certain EGUs. After January 1, 2004, new budget EGUs that commence commercial operation may purchase allowances from the new source set-aside based on a pricing structure defined in this section.

Section 217.770 Early Reduction Credits for Budget EGUs

This section allows budget EGUs to request early reduction credits (ERCs) if they reduce NO_X emissions in the 2001, 2002 or 2003 control periods for use in 2004 and 2005 control periods. This section sets forth the various requirements associated with the generation and recording of these ERCs along with the requirement for monitoring system availability. It is understood that early reduction credits for the year 2001 would require emissions monitoring according to part 75 during the 2000 ozone period in order to establish a baseline and for each control period for which early reduction credits are requested. This and other issues were addressed to the State in a letter dated May 16, 2001.

C. Components of the State's Final Rules

1. What Geographic Regions and Sources Are Affected by the State's Final Rule?

The final rules affect all fossil fuel-fired boilers, combustion turbines or combined cycle systems in the State of Illinois serving a generator with a nameplate capacity greater than 25 MWe and selling electricity (and boilers, turbines, and all combined cycle systems in the State of Illinois serving smaller generators provided that these units have heat input rates exceeding 250 mmBtu/hour and have a potential to provide more than 50 percent of their power output to the generators), and any opt-in sources in the State of Illinois as described in the rule.

2. What Are the Allowable NO_X Emission Rates or Levels for Affected Sources?

The NO_X reductions called for in the State rule are based on an NO_X emissions cap required for EGUs in the State. The target budget established in the State rule is 30,701 tons for the control period. The cap is based on an emission rate of 0.15 pounds/mmBtu heat input for EGUs operating in 1995/1996 applied to operating levels expected in 2007. With regard to the attainment demonstration for the Chicago-Gary-Lake County nonattainment area, the State submitted an attainment demonstration on December 26, 2000. This rule is intended to provide the level of control from EGUs that, in conjunction with rules establishing similar requirements for other source types, will meet Illinois' NO_X emission budget under the NO_X SIP Call.

3. What Are the Monitoring, Recordkeeping, and Reporting Requirements for Affected Sources?

The IEPA incorporated by reference the EPA Part 96 monitoring, recordkeeping, and reporting requirements for affected sources. However, in section 217.770(a) of the rule, which addresses early reduction credits for budget EGUs, the rule provided that ''* * * monitoring system availability shall be not less than 80 percent during the control period prior to the control period in which the NO_X emissions reduction is made * * *''. Also, in the opt-in process, the State, in section 217.776(b) addressed monitoring system availability of ''* * * not less than 80 percent * * *''. This differed with the EPA requirement for monitoring in section 96.84(b) of 40 CFR part 96, which requires 90 percent availability. In the course of finalizing the rule, the State revised the availability requirement to 90 percent and, therefore, this portion of the rule is approvable.

4. What Is the Compliance/Implementation Deadline for Affected Sources?

The Illinois rule had a compliance date that was contingent upon implementation of NO_X rules in other States. Section 217.756 stated that sources ''* * * shall be subject to the monitoring and [emission control] requirements * * * starting on the later of May 1, 2003, * * * or [May 1 of the year after] all of the other States subject to the provisions of the NO_X SIP Call [in Region 5 or contiguous to Illinois] have adopted regulations to implement NO_X trading programs and other required reductions of NO_X emissions pursuant to the NO_X SIP Call, and such regulations have received final approval by USEPA * * *, or a final FIP for ozone promulgated by USEPA is effective.'' The relevant other States are Indiana, Michigan, Ohio, Missouri, and Kentucky. This language provided for compliance with relevant requirements by May 1, 2003, except that a later compliance date would apply if any of

these five other States did not have adequate NO_X regulations either as approved State regulations or as effective promulgated Federal regulations by the end of 2002.

This language raised significant concerns which we communicated to the State. For EPA to approve this rule and the expected other related rules as satisfying the NO_X SIP Call, EPA must conclude that the controls needed to achieve the budget will be required by May 31, 2004. As noted above, in a June 27, 2001, letter, IEPA informed EPA that on June 22, 2001, the Governor signed into law House Bill 1599 which specifies a May 31, 2004, compliance date applicable to this rule and other rules which are part of the NO_X SIP.

D. Does the Illinois NO_X Trading Program Meet the Federal NO_X Budget?

EPA believes the Illinois NO_X EGU rule submittal addresses all of the elements of the NO_X model rule for EGUs and therefore, when fully implemented, will meet the existing requirements of the Federal NO_X budget. The State's SIP included rules controlling emissions from electric generating units, non-electric generating units, cement kilns, and associated budget trading rules. The SIP also includes a rule which incorporates by reference portions of the Federal part 96 rule, and includes a budget demonstration which was submitted by the Chief, Bureau of Air, in a letter dated June 18, 2001.

The most significant portion of the plan was a revision of the State's rules, requested by EPA, which responded to our concerns regarding the delayed compliance date affecting the three source categories and the budget trading program. This revision to the rules was brought about by a change in legislation, signed by the Governor and submitted by the State to EPA in a letter dated June 27, 2001.

All of these items have been reviewed by EPA and found to meet the requirements set forth in the EPA model rule and in part 51.121. The State has not yet submitted a rule to control internal combustion engines because EPA has not promulgated its final rule for this source category.

The budget data are derived from EPA's inventory, obtained from the EPA Internet site at *ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000/*. The following table summarizes the 2007 budget for the five categories of sources identified in EPA's rulemaking, namely electrical generating point sources (EGUs), non-electrical generating point sources (non-EGUs), stationary area sources, non-road mobile sources, and on-road mobile sources.

Sector	2007 CAA base ozone season total (tons)	2007 Budget ozone season total (tons)	Emission reduction (tons)	Category reduction (%)	Percent of total reduction	Contribution to NO_X trading budget (tons)
Electrical Generating Units (EGUs)	119,311	32,372	86,939	73%	89%	30,701
Non-Electrical Generation Units (Non-EGUs)	71,011	59,765	11,246	16%	11%	4,856
Area	9,369	9,369	0	0	0	0
On-Road Mobile	112,518	112,518	0	0	0	0
Non-Road	56,724	56,724	0	0	0	0
Total	368,933	270,748	98,185	27% Total Reduction		35,557

The reductions of 11,246 tons from non-EGUs are based on reductions at large cement kilns, large industrial boilers and turbines, and assuming a 90% reduction from large internal combustion (I.C.) engines. Illinois has not yet submitted a rule to control I.C. engines because EPA has not promulgated its final rule covering I.C. engines. Also, in the Subpart U (non-EGU) SIP submittal, Illinois EPA has requested that EPA incorporate a slightly revised budget for non-EGUs that reflects inventory corrections. When these revisions are incorporated, the non-EGU point source's 2007 base and 2007 budget emissions will be 71,011 and 59,765 tons of NO_X per ozone season, respectively, as compared to the 70,948 and 59,577 tons per season reported in EPA's inventory.

As with the approach EPA assumed in formulating its budget, Illinois' approach reflects controls on EGUs and on non-EGUs. Illinois' rules provide for large EGUs and large point non-EGUs to participate in the Federal NO_X Trading Program, and their NO_X emissions are capped at the same level as contained in EPA's inventory of March 2, 2000, with the exception of revisions requested in Illinois' non-EGU (Subpart U) SIP revision. The revised trading budget for non-EGUs as proposed by Illinois is 4,856 tons, as compared to 4,882 reported in the EPA's inventory. The Subpart T cement kiln rule does not cap NO_X emissions from large kilns. Illinois followed EPA's model rule in developing the Subpart T regulation. It is a technology/rate-based rule. Though Illinois has used the emissions reductions specified in the March 2, 2000, inventory, the NO_X emissions can decrease or increase slightly depending on the options the sources choose to comply with the Subpart T rule. EPA is satisfied with the State's submittal.

E. What Public Review Opportunities Were Provided?

The State reports that early in 1999, the IEPA commenced regular meetings with the NO_X Technical Committee and with representatives of the existing EGUs. The State met with these existing sources on numerous occasions. Most of the time was spent developing concepts in the flexible portions of the Federal NO_X Trading Program, i.e., initial allocations, allocation methodology, and the use of the Compliance Supplement Pool. The State also met with new EGUs and again with existing EGUs for a second time to discuss how allowances would be allocated.

Following the May 25, 1999 stay by the Court of Appeals, the IEPA shifted its effort to meet the requirements of the 1-hour ozone standard attainment demonstration. When this stay was lifted on June 22, 2000, IEPA again began to formulate a program to comply with the NO_X SIP Call rule. IEPA again met with the affected sources and also with the American Lung Association of Chicago, the Illinois Environmental Council, the Environmental Law and Policy Center, and the Illinois Environmental Regulatory Group.

F. What Requirements are Contained in the NO_X Emission Control Rule From the Standpoint of the Lake Michigan Ozone Attainment Demonstration?

As noted in the December 16, 1999 proposed rulemaking on the State's

attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area (64 FR 70496), the attainment demonstration noted that significant reductions in regional NO_X emissions would be needed to attain the standard in the nonattainment area. The State did assume significant future reductions in background (transported) ozone levels and upwind NO_X emissions to reflect possible impacts from EPA's NO_X SIP Call based on information available prior to April 1998.

G. What Guidance did EPA Use to Evaluate Illinois' NO_X Control Program?

The State of Illinois asked that the Part 217 NO_X emissions control rule be parallel processed by EPA in order to expedite eventual approval of the State's NO_X SIP. Guidance for parallel processing is found at 47 FR 27073 (June 23, 1982). In addition, we used 40 CFR part 96 for review of portions of the submittal which apply. The State incorporated by reference a significant portion of 40 CFR part 96. The portions incorporated by reference are listed elsewhere in this action.

H. Does the Illinois Part 217 NO_X Emissions Control Program Meet the Needs of the Ozone Attainment Demonstration?

Illinois and other Lake Michigan States completed the attainment demonstration for the Lake Michigan area. EPA proposed on July 11, 2001 (66 FR 36370) to approve IEPA's Chicago area attainment demonstration because we believe it adequately demonstrates attainment for the Chicago-Gary-Lake County ozone nonattainment area. A complete discussion of the budget demonstration can be found at 66 FR 34382.

I. Does the Illinois Part 217 NO_X Emissions Control Program Meet All of the Federal NO_X SIP Call Requirements?

No. The Part 217 rule only addresses the NO_X controls for EGUs. Although these reductions are significant, they are not sufficient to guarantee that the State will achieve the NO_X emission budget established in the NO_X SIP Call. To achieve the acceptable NO_X emission level of the NO_X SIP Call, the State adopted additional emission control regulations for non-EGUs and Cement Kilns. The adequacy of the full set of reductions to satisfy the NO_X SIP Call requirements is addressed in separate rulemaking on these sources and on the budget demonstration (See 66 FR 34382). Other previously identified deficiencies and how Illinois addressed them are discussed below.

J. What Deficiencies Were Noted in Illinois' NO_X Emissions Control Rules and Has Illinois Satisfactorily Addressed Them?

We reviewed the State's draft Part 217 NO_X trading program rule for EGUs and gave the State comments on deficiencies. EPA again reviewed the rule when it was submitted in February 23, 2001, and found the State made many of the corrections suggested by us. These deficiencies were corrected by Illinois and the State included these changes in an errata sheet filed with the Illinois Pollution Control Board during its hearing process. We again reviewed the rule and the legislation following the action by the Legislature which addressed the compliance delay language and found this portion addressing compliance delay to be acceptable.

Section 217.101(a)

The reference to Method 7 is questionable. Method 7 is a one time stack test. The rule should require Continuous Emissions Monitoring Systems (CEMS). Additionally, there is a more recent method than method 7. It is method 7e. The State made this correction in its final rule. The State's rule incorporates by reference EPA's measurement methods, it also refers to 40 CFR part 75. Table 1 lists the elements of EPA's model rule which the State incorporated by reference. Included in that list is part 75 Continuous Emissions Monitoring which the State requires for all sources subject to this rule. It is clear that the State's intent in this section is to see that all sources use CEMs as the exclusive requirement for measuring emissions.

Section 217.754(c) Low-Emitter Status

If a unit receives low emitter status, it will not be required to monitor emissions. The unit will need only to report operating hours. In Subpart W at 217.754(c) of the State's rule, which requires potential NO_X emissions to be calculated by either part 75 or by the default emissions rate, the rule should require only the use of default emissions rates. However, in the State's final rule this recommendation was not followed. The intent of this portion of the rule is to provide a unit two alternatives to qualify for low emitter status. The first alternative requires a unit to take permit limits on its operating hours and potential NO_X mass emission in order to ensure that the units potential NO_X mass emission do not exceed 25 tons during the ozone season.

The second alternative allows a unit with monitored ozone season NO_X emissions of 25 tons or less, as monitored according to part 75, to qualify for low emitter status. Under this alternative, a unit must again take a permit limit restricting ozone season operating hours and potential NO_X mass emissions during the season to 25 tons or less.

The State goes on to define the use of the term ''potential NO_X mass emissions'' as it is used in this section. In Subpart W, section 217.754(c), this term is first used in paragraph (c)(1)(B), stating that the source's permit must ''Limit the EGU's potential NO_X mass emissions * * * to 25 tons or less.'' Under paragraph (c)(1)(D), the permit must in addition ''Require that the EGU's potential NO_X mass emissions be calculated [either by monitoring according to 40 CFR 75 or by multiplying maximum potential hourly emissions times hours of operation].'' Consequently, ''potential emissions'' must be interpreted to mean the emissions determined according to whichever method is used under section 217.754(c)(1)(D). Since the measurements under 40 CFR 75 measure actual emissions, a low emitting source using such monitoring would rely largely on actual emissions data to evaluate compliance with the permit limit on potential NO_X mass emissions.

Section 217.756

This section repeats section 96.6 of 40 CFR part 96, which is already incorporated by reference in the State rule. EPA recommended section 217.756 be deleted. The State chose to leave this section in its rule as a means of providing fuller notice to sources in Illinois subject to the rule applicable to them.

(d)(3). This subsection is discussed in detail in previous pages of this action and was the main reason for EPA's August 31, 2000, proposed disapproval in the alternative (See 65 FR 52967). In a June 27, 2001, letter to EPA, IEPA informed EPA that on June 22, 2001, the Governor signed into law House Bill 1599 which specifies a May 31, 2004, compliance date.

(g). Effect on other authorities—We recommended that rather than referencing 40 CFR 96.4(b), the rule should reference 217.754(c). The State agreed and made the change.

Section 217.762

Throughout this section, when the State addressed allocation of allowances from the new source set-aside, it uses the phrase ''to budget EGUs that have

not fully operated for the full 2000 control period (italics supplied).'' Read literally, it could authorize an existing source that was shut down for part of a control period to receive allowances from the new source set-aside. We recommended the State clarify this, perhaps by replacing the italicized phrase with the phrase ''commenced commercial operation.'' This latter term is used in section 217.768. In order to use consistent terminology, the State made the recommended change.

Section 217.768

(i) In this section the State should clarify the phrase ''* * * less than one-half of the control period in 2002 * * *''. EPA recommended this language be more specific. The State changed this to ''* * * but have operated for 76 or fewer days of the control period in 2003 * * *'' This changed not only the language to clarify the meaning but also changed the year to reflect the court change in the date of compliance.

Section 217.770

(a) The unit's monitoring data availability was listed at 80 percent. In the State's final rule data availability was changed to 90 percent, as in the model Federal rule. The phrase, the ''* * * control period prior to the control period * * *'' is ambiguous due to the double reference to ''control period.'' This was made clear in the final rule. The State also revised the years in which early reduction credits can be earned as reflected in the change in the date by which sources must be in compliance.

Section 217.774 Opt-in Units

(a)(2) By its terms, the provisions authorize units to opt-in only if all of their emissions are vented to a stack and monitor in accordance with part 75.

Section 217.776

(b) Monitoring data availability was 80 percent in the State's proposed rule. The State changed this to 90 percent in it's final rule.

Section 217.778

(b)(3) In the State's final rule this section was changed to (b)(2). The rule referred to ''any allowances allocated to that unit under section 217.782 of this subpart for *the control period* * * * (emphasis added).'' We recommended the emphasized term be revised to read ''* * * the same or earlier control period * * *'' The State's final rule includes this recommended change.

Section 217.780

Throughout this section, the State refers to a unit which changes its regulatory status and becomes a budget opt-in unit. In fact, this provision is meant to address units which change their regulatory status and become budget units. EPA recommended in this section the phrase ''* * * budget opt-in unit * * *'' be replaced with the phrase ''* * * budget EGU * * *''. The State did not make this recommended change as it believed the change was not necessary. The State retained the terminology in order to keep it straight for purposes of Illinois sources that are opt-in units, not ones that are required to be in the trading program. As they are opt-in units, they can opt out again. The State believes the meaning of the phrase from any point of view is not ambiguous. We agree, and this is not an approvability issue.

Section 217.782

(b)(2)(B) This section was unclear and referred to the year of the control period not to the year prior to the year of the control period. The State agreed and made the change in the final rule.

III. Response to Public Comments

EPA proposed to approve the Illinois EGU rule on August 31, 2000 (65 FR 52967). We received 2 comments on the proposal. One comment was from the State of Missouri Department of Natural Resources, Division of Air Quality (DAQ). This comment dated October 2, 2000, was a letter requesting that EPA extend the comment period by 30 days so that DAQ would have sufficient time to review the Federal proposal and its potential impacts on Missouri and submit substantive comments to EPA. No follow-up comments on the proposal were received from the DAQ, and its request to extend the comment period was subsequently withdrawn.

The second comment is from the State of Illinois and was received in a letter dated September 29, 2000. These comments responded to specific issues EPA noted in the August 31, 2000, proposal including a comment on proposed State rule concerning the compliance delay language.

IV. Final Action

What Action is EPA Taking Today?

EPA is taking final action today to approve Illinois' Administrative Code 217, Subpart W, NO_X Trading Program for Electrical Generating Units. These rules require reductions in emissions of nitrogen oxides from large EGUs and require a statewide cap on NO_X emissions, consistent with the requirements of the NO_X SIP Call. 63 FR 57355 (October 27, 1998)

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission,

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Jo Lynn Traub,

Acting Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(157) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(157) On May 8, 2001, the Illinois Environmental Protection Agency submitted revisions to 35 Ill. Adm. Code 217, Subpart W: NO[x] Trading Program for Electrical Generating Units with a request that these rules be incorporated into the Illinois State Implementation Plan. On June 11, 2001, the Illinois EPA submitted Section 9.9(f) of the Illinois Environmental Protection Act as revised by Public Act 92–012 (formerly House Bill 1599) which was approved by both Houses of the Illinois General Assembly on June 7, 2001, approved by the Governor on June 22, 2001, and became effective on July 1, 2001. Section 9.9(f) requires a May 31, 2004 final compliance date for 35 Ill. Adm. Code 215, Subparts T, U and W. This compliance date replaces the compliance date contained in Section 217.756(d)(3).

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 217 Nitrogen Oxides Emissions, Subpart W: NO[x] Trading Program for Electrical Generating Units except for 217.756(d)(3) which has been superseded by Section 9.9(f) of the Illinois Environmental Protection Act. Added at 25 Ill. Reg. 128, January 25, 2001, effective December 26, 2000.

(B) Section 9.9(f) of the Illinois Environmental Protection Act. Adopted by both Houses of the Illinois General Assembly as part of Public Act 92–0012 (previously House Bill 1599) on May 31, 2001, approved by the Governor of Illinois on June 22, 2001, effective July 1, 2001.

[FR Doc. 01–27932 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 131b; FRL–7077–7]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 30, 2001, Indiana submitted and requested parallel processing of its proposed plan to control emissions of oxides of nitrogen (NO_X) throughout the State. On July 2, 2001, through parallel processing, EPA proposed approval of the plan provided Indiana revise its proposed rule consistent with the discussion in EPA's proposal. Indiana did so and submitted its final plan to EPA on August 20, 2001 with a supplement on September 19, 2001. The plan consists of two rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and/or maintenance of the 1-hour ozone standard in several 1-hour ozone nonattainment areas including the Chicago-Gary-Lake County and Louisville areas. Indiana developed its plan, which focuses on electric generating units, large industrial boilers, turbines and cement kilns, to achieve the majority of reductions required by EPA's October 27, 1998, NO_X State Implementation Plan (SIP) Call. As of May 1, 2004, Indiana's plan will also provide reductions at units currently required to make reductions under the EPA's Clean Air Act (CAA) Section 126 rulemaking. EPA is approving this plan as a SIP revision fulfilling the NO_X SIP Call ''Phase I'' requirements. EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. Through this action, both the sanctions clock and EPA's Federal Implementation Plan (FIP) obligation are terminated.

EFFECTIVE DATE: This rule will be effective December 10, 2001.

ADDRESSES: Copies of the State's submittals and materials relevant to this rulemaking are available for public inspection during normal business

hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (18th floor). (Please telephone Ryan Bahr at (312) 353–4366 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–4366, E-Mail Address: *bahr.ryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The EPA is approving the Indiana Department of Environmental Management's (IDEM's) NO_X SIP Call SIP revision. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

Table of Contents

In the following questions and answers, whenever the term ''you'' is used it refers to the reader of this final rule and ''we,'' ''us,'' or ''our'' refers to the EPA.

I. Summary of the State Submittal

A. When Did Indiana Develop and Submit the NO_X Emission Control Plan to the EPA?

On March 30, 2001, IDEM submitted its proposed plan and requested parallel processing, which allows a state to submit a draft plan for approval prior to actual adoption by the state. On July 2, 2001, through parallel processing, EPA proposed approval of the plan. On August 20, 2001 and September 19, 2001, IDEM submitted its final NO_X emission control plan to the EPA.

IDEM had originated its rulemaking process on regional NO_X reductions in 1999. EPA reviewed and provided extensive comments on several previous drafts of the rules. The State addressed all issues raised before adopting its final rules. The State did not, however, address some of the issues before it proposed rules. Since our proposal was based on the State's proposed rules, EPA discussed these issues at length in our proposed approval. Indiana's final resolution of each of these issues is consistent with our comments in our proposed rule, as discussed in this **Federal Register** action.

B. What Are the Basic Components of the State's Final Plan?

Indiana's final plan includes a budget demonstration, supporting materials and two NO_X rules: 326 IAC 10–3, pertaining to cement kilns and blast furnace gas boilers, and 326 IAC 10–4, a trading program focusing on reductions from electric generating units (EGUs) and large boilers and turbines. The budget demonstration is discussed in more detail in Section C, ''How does Indiana address its statewide NO_X budget?'' The supporting materials include information such as the number of allowances that Indiana intends EPA to allocate to each EGU unit for 2004—2006 and each large affected non-EGU unit for 2004—2009 and detailed inventories. The rules included in the plan require compliance statewide by May 31, 2004. This plan constitutes Indiana's response to ''Phase I'' of the NO_X SIP Call. ''Phase I'' NO_X budgets reflect controls on EGUs subject to the acid rain program, large boilers and turbines, and cement kilns. The tables below summarize the requirements of Indiana's two final rules and highlight some key differences between 326 IAC 10–4 and the model rule in the NO_X SIP Call (40 CFR Part 96). These tables are not meant to be exhaustive of every requirement in Indiana's rules. Rather, they are intended to provide a general idea of how Indiana's rules are structured and some of the significant requirements. For a complete understanding of the rules, please see the applicable rulemaking package which is available at the locations listed in the **ADDRESSES** section of this final approval.

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3

Cite	Section title/subject
326 IAC 10–3–1	Applicability—Generally Portland Cement Kilns larger than specified size with specified exceptions and ''Blast furnace gas boilers.''
326 IAC 10–3–2	Definitions
326 IAC 10–3–3	Emission limits • Technology Requirements (mid-kiln firing or low-NO_X burners) or • Ozone Season Emission Averages 2.8–6 pounds of NO_X per ton of clinker depending on type of kiln or • Approved alternatives to achieve 30 percent reductions. • Blast furnace gas boilers—.17 lb/mmBtu.
326 IAC 10–3–4	Monitoring and Testing Requirements. • Technology Requirements—preventative maintenance plan. • Ozone Season Emission Averages or Approved alternatives to achieve 30 percent reductions—initial and subsequent annual testing or NO_X Continuous Emission Monitoring Systems (CEMS).

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3—Continued

Cite	Section title/subject
326 IAC 10–3–5	• Blast furnace gas boilers—monitor fuel usage and percentage heat input. Recordkeeping and Reporting (a) Recordkeeping—Begin May 31, 2004, and keep records at the unit for 5 years. • Technology Requirements—record maintenance, startup, shutdown, and malfunction information. • Ozone Season Emission Averages or Approved Alternatives to achieve 30 percent reductions—emissions in pounds per ton of clinker. • Blast furnace gas units—fuel information and emissions in lb/mmBtu. • For any of the above—startup, shutdown, and malfunction information and any CEMS data if CEMS are used. (b–e) Reporting • For cement kilns, by May 31, 2004 submit initial information to IDEM. • For cement kilns and blast furnace gas boilers, by October 31, 2004 and before October 31 each year after submit NO_X emission information.

In addition to the specific rule for cement kilns and blast furnace gas boilers, 326 IAC 10–3, Indiana adopted a rule to implement the Nitrogen Oxides Budget Trading Program at 40 CFR part 96.

TABLE 2.—326 IAC 10–4 NITROGEN OXIDES BUDGET TRADING PROGRAM

Cite/section	Title/subject	Comparable section in 40 CFR part 96 model rule/note
326 IAC 10–4–1	Applicability	§ 96.4—Indiana's rule includes same core sources (EGUs, including EGUs not subject to the acid rain program, and large non utility boilers and turbines) as the NO_X SIP Call, except for blast furnace gas boilers covered under 326 IAC 10–3 and internal combustion engines which will be addressed under Phase II of the NO_X SIP Call. It allows for opt-ins. It also contains 2 additional 25-ton exemptions.
326 IAC 10–4–2	Definitions	§ 96.2—Indiana adds pertinent definitions, including a definition for ''energy efficient or renewable energy projects.'' Indiana also adjusts some definitions to account for 2004 compliance date and units affected under Section 126 rulemaking.
326 IAC 10–4–3	Retired Unit Exemption	§ 96.5.
326 IAC 10–4–4	Standard Requirements	§ 96.6.
326 IAC 10–4–5	Computation of time	§ 96.7—Indiana clarified that the ozone control period always begins and ends on the calendar dates specified in the definition.
326 IAC 10–4–6	NO_X Authorized Account Representative.	§ 96.10, § 96.11, § 96.12, § 96.13, § 96.14.
326 IAC 10–4–7	Permit Requirements	§ 96.20, § 96.21, § 96.22, § 96.23, § 96.24, § 96.25—Indiana is implementing the permitting requirements with its existing permitting programs.
326 IAC 10–4–8	Compliance Certification	§ 96.30, § 96.31.
326 IAC 10–4–9	Allowance Allocations	§ 96.40, § 96.41, § 96.42—IDEM is establishing a total trading program budget of 53,960 tons of NO_X per control period. IDEM requested changes to the SIP Call budget as discussed in the budget demonstration. The State also provides a mechanism which could potentially allow for a transition from the Section 126 petitions to the SIP Call. The State has developed an allocation methodology, utilizing the flexibility under the NO_X SIP Call.
326 IAC 10–4–10	NO_X allowance tracking system	§ 96.50, § 96.51, § 96.52, § 96.53, § 96.54, § 96.56, § 96.57.
326 IAC 10–4–11	NO_X allowance transfers	§ 96.60, § 96.61, § 96.62.
326 IAC 10–4–12	NO_X monitoring and reporting requirements.	§ 96.70, § 96.71, § 96.72, § 96.73, § 96.74, § 96.75, § 96.76.
326 IAC 10–4–13	Individual opt-ins	§ 96.80, § 96.81, § 96.82, § 96.83, § 96.84, § 96.85, § 96.86, § 96.87, § 96.88.
326 IAC 10–4–14	NO_X Allowance Banking	§ 96.55 (a) and (b).
326 IAC 10–4–15	Compliance Supplement Pool	§ 96.55(C)—The State has made several changes to this section to allow for an easier transition from the Section 126 rulemaking.

Two sections of the 40 CFR part 96 model rule, namely 40 CFR 96.1 and 40 CFR 96.3, were not addressed by a specific section in Indiana's rule. 40 CFR 96.1 describes the purpose of the model rule and establishes the general framework. It provides that a unit needs to comply only after a state with proper jurisdiction adopts and submits a rule

and the EPA approves that rule as part of the SIP. 40 CFR 96.1 also requires that, to the extent a state adopts specified parts of the rule, that state needs to authorize the EPA to assist in the implementation. Indiana addressed this requirement in its rule's definition of EPA in 326 IAC 10–4–2(73), where it authorizes EPA to assist in operating the trading program. 40 CFR 96.3 is simply a list of acronyms that were used in the model rule. Unlike the model rule, instead of defining the acronyms in one section, Indiana's rule usually defines those acronyms the first time they are used in the document.

C. How Does Indiana Address Its Statewide NO_X Budget?

1. What NO_X Budget Did EPA Determine for the State in the NO_X SIP Call?

EPA finalized a NO_X budget for each affected state on October 27, 1998, in its NO_X SIP Call (63 FR 57355). Since that time, EPA has also published two technical amendments. In addition, the D.C. Circuit Court of Appeals rendered an opinion on March 3, 2000, that, while generally upholding the NO_X SIP Call, slightly changed states' NO_X SIP Call budgets. EPA sent letters to the affected states' governors on April 11, 2000, to specify what portion of the budget needed to be met to achieve the reduction consistent with the amendments as upheld by the Court. Consistent with the Court's opinion, these budgets, referred to as the ''Phase I NO_X budgets,'' reflect controls on EGUs subject to the acid rain program, large boilers and turbines, and cement kilns. For Indiana, the Phase I budget was 234,625 tons for each NO_X SIP Call ozone control period. The corresponding compliance supplement pool was 19,915 tons. The ''compliance supplement pool'' is a voluntary provision that provides flexibility to states in addressing concerns of full compliance by May 31, 2004. Each state will be able to use its pool to provide additional allowances that sources may use to cover emissions during the 2004 and 2005 ozone control periods.

2. What Changes Did the State Request to the NO_X Budget and Are Those Changes Approvable?

In the budget demonstration, the State took a slightly different approach than that laid out by EPA in the phased approach, and also requested several changes to the statewide budget. The resulting overall budget for the State that EPA is approving in this action is 233,633 tons. These changes also affect the portion of the budget being used to ensure that the appropriate reductions are achieved from EGUs and large industrial boilers and turbines in the State, namely the trading budget. The State trading portion of the budget, in its final rule and submittal, is 53,960 tons.

In the budget demonstration, IDEM used the same inventories as the EPA for area, on-road mobile and non-road mobile categories. IDEM also used the inventories from the NO_X SIP Call as a starting point for its budget demonstration for EGUs and the non-EGU point sources.

For the EGU inventory, IDEM started with the inventory from the March 2, 2000 technical amendment(65 FR 11222). In doing so, IDEM has considered all the reductions assumed for EGUs, including assumed reductions from the EGUs not currently covered under the acid rain program. IDEM then requested moving several units at the Indianapolis Power & Light Perry K facility, identified by EPA in the EGU inventory, to the non-EGU inventory based on those units meeting the definition in 326 IAC 10–4–2 for ''large affected units.'' The 2007 projected uncontrolled emissions from these units were then multiplied by 40 percent (to account for 60 percent control as non-EGU large affected units) and added to the non-EGU portion of the budget.

In addition to the changes to the Perry K facility, IDEM determined that 19 units that EPA had characterized as large non-EGUs, in fact, have capacities of less than 250 mmBtu/hr. As a result, they do not meet either EPA's or IDEM's definition for units that need to be controlled. Therefore, IDEM requested and EPA is approving the shifting of these units from the large non-EGU portion of the inventory to the small non-EGU portion. More information on the inventory and these changes is available in the Docket.

IDEM also presented inventory information that units at Bethlehem Steel and Purdue University are larger than 250 mmBtu/hr. Since these units meet the definition for ''large affected units,'' IDEM has requested that they be moved to that category and with controls assumed to be 60 percent. IDEM also noted two numerical errors in the SIP call inventory; one affecting a New Energy unit and the other affecting two units at SIGECO's Warrick Station. The State has submitted inventory information to support correcting these errors. We are approving these inventory corrections. More information on these changes is available in the Docket.

The following table shows how IDEM's final inventories differed from those used by EPA in the April 11, 2000, notification to states of EPA's approach to implementing the NO_X SIP Call in light of the March 3, 2000 court decision.

TABLE 3.—EPA AND IDEM INVENTORIES

Source category	EPA NO_X SIP call April 11, 2000, inventory		IDEM final SIP inventory	
	2007 Projected uncontrolled	2007 Budget	2007 Projected uncontrolled	2007 Budget
Point:				
EGUs	136,773	47,712	136,773	46,778
Non-EGUs	69,011	52,042	67,263	51,984
Area	29,070	29,070	29,070	29,070
On-road Mobile	79,307	79,307	79,307	79,307
Non-road Mobile	26,494	26,494	26,494	26,494
Total	340,655	234,625	338,907	233,633

EPA is approving the changes submitted by IDEM in its budget demonstration. Based on these changes, the State's NO_X budget is 233,633 tons.

3. How Does Indiana Demonstrate That It Is Meeting the Budget?

To meet the overall budget, Indiana is relying on reductions from cement kilns of 30 percent (326 IAC 10–3), and reductions equivalent to 0.15 pounds of NO_X per million BTU (lb/mmBtu) heat input for EGUs and a 60 percent reduction from industrial boilers and turbines with maximum rated heat input greater than 250 mmBtu/hr. The reductions from EGUs and large industrial boilers and turbines will be achieved through the State's trading program (326 IAC 10–4). The State demonstrates that, based on these regulations and the changes that it requested to its 2007 NO_X budget, it is controlling facilities to the extent necessary to ensure the budget is being met. The following table shows that, through the implementation of controls on EGUs, large industrial boilers and turbines and cement kilns, the State projects, in its budget demonstration, that it will meet its 2007 budget.

TABLE 4.—IDEM'S FINAL BUDGET DEMONSTRATION

Source category	2007 Projected uncontrolled	2007 Budget	Reductions	Trading portion of budget
EGUs	136,773	46,778	89,995	45,952
Non-EGUs:				
10—4 Units > 250 mmBtu/hr	21,616	8,008	13,608	8,008
Controlled cement kilns	5,572	3,900	1,672	.....
Blast Furnace Gas Boilers	3,099	3,099	0	.....
Uncontrolled	36,976	36,977	0	.....
Area	29,070	29,070	0	.....
On-road Mobile	79,307	79,307	0	.....
Non-road Mobile	26,494	26,494	0	.....
Total	338,907	233,633	[1] 105,274	53,960

[1] Slight difference due to rounding.

One of the most significant numbers in this chart is the total trading budget since, through the trading program, this budget will ensure that the majority of emission reductions are being obtained. As shown below, Indiana included ''set-asides'' for new sources, equivalent to 5 percent of the EGU portion of the budget and 1 percent of the non-EGU portion until 2006, with 2 percent and 1 percent respectively, thereafter. The State also included an energy efficiency set aside of 1 percent from the non-EGU category. The concept of a set aside was discussed in NO_X SIP Call Rulemaking **Federal Register** actions. It is a tool to help states manage their budgets. A state may establish set-asides where a portion of the trading budget is reserved for a special purpose. In this case, the result is that the total trading budget is 53,960, including the set-asides. The following table illustrates the total Indiana budget, the trading portion and the set-asides.

TABLE 5.—SUMMARY OF INDIANA'S PHASE I NO_X BUDGET

[Tons/season (as revised in final adopted rule)]

	EGU	Non-EGU	Area	On-road mobile	Non-road mobile	Total
2007 Projected Uncontrolled Inventory	136,773	67,263	29,070	79,307	26,494	338,907
2007 Budget	46,778	51,984	29,070	79,307	26,494	233,633
NO_X Trading Budget Portion	45,952	8,008	.....	.....	.....	53,960
New Source Set Aside	2,298	80	.....	.....	.....	2,378
Energy Efficiency Set Aside	.....	1,079	.....	.....	.....	1,079
Trading Budget minus Set-Asides	43,654	6,849	.....	.....	.....	50,503

EPA is approving the trading budget and set-asides reflected in Table 7 above as contained in Indiana's final adopted rules and its submitted plan.

D. What Public Review Opportunities Did the State Provide?

Indiana has led a proactive outreach effort with affected stakeholders throughout this rulemaking process. IDEM began conducting discussions with stakeholders prior to the publication of the NO_X SIP Call. In April 1999, IDEM drafted language for a NO_X rulemaking, considering options to fulfill the NO_X SIP Call requirements and a NO_X emission limit of 0.25 lb/mmBtu for EGUs, and began to hold monthly public meetings to discuss issues and receive feedback on the approaches it was developing to respond to the NO_X SIP Call. Indiana began its formal rulemaking process for the regulations in response to the NO_X SIP Call on July 1, 2000, opening a comment period for 30 days. (The State of Indiana requires at least three written public comment periods for each rulemaking.) The State opened the second comment period on December 1, 2000. Indiana preliminarily adopted the draft rule on February 7, 2001.

The proposed rule was published in the Indiana Register on April 1, 2001, providing a third written comment period. The comment period closed on April 23, 2001. Indiana received numerous comments from EPA and affected stakeholders. Since preliminary adoption, IDEM has held numerous formal and informal meetings to discuss those comments and their resolution with affected stakeholders and EPA. IDEM and EPA discussed several changes to the rules, significant and otherwise, that were made in response to comments. The significant issues that were addressed after the State's proposal are discussed in today's action.

Indiana adopted final rules on June 6, 2001. Indiana submitted its NO_X plan to

EPA, including its response to comments, on August 20, 2001, with a supplemental submittal on September 19, 2001. EPA has determined that the State's submittal is complete and approvable.

E. What Documents Did EPA Use To Evaluate Indiana's NO_X Control Program?

In evaluating Indiana's NO_X rules, EPA considered a number of documents related to the NO_X SIP Call, Section 110 of the Clean Air Act and 40 CFR Part 51. These documents include:

(1) EPA's ''Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone,'' dated September 1998.

(2) EPA's ''Air Quality Modeling Technical Support Document for the NO_X SIP Call,'' dated September 23, 1998 [Docket Number A–96–56, VI–B–11].

(3) ''Federal Implementation Plans to Reduce the Regional Transport of Ozone; Proposed Rule,'' published October 21, 1998. (63 FR 56393)

(4) ''Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule,'' published October 27, 1998 (63 FR 57355). This **Federal Register** is referred to as ''The NO_X SIP Call'' in today's action.

(5) ''Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone,'' published December 24, 1998 (63 FR 71220).

(6) EPA's ''Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport'' dated April 1999 [Docket Number A–97–43, VI–C–01].

(7) EPA's '' NO_X SIP Call Checklist,'' (the checklist), issued on April 9, 1999. The checklist summarizes the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122.

(8) ''Development of Emission Budget Inventories for Regional Transport NO_X SIP Call'' issued by the EPA Office of Air Quality Planning and Standards May 1999 and technically-amended December 1999.

(9) Technical amendments to the NO_X SIP Call, published May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222).

(10) The Section 126 findings and requirements as contained in the January 18, 2000, **Federal Register** (63 FR 2674).

(11) The April 11, 2000 letter from EPA Administrator Carol Browner to Indiana Governor Frank O'Bannon, regarding the phased approach to implement the issues upheld by the United States Court of Appeals for the District of Columbia Circuit on March 3, 2000.

(12) ''Summary of EPA's Approach to the NO_X SIP Call in Light of the March 3rd Court Decision'' fact sheet issued April 11, 2000.

(13) EC/R, Inc., ''NO_X Control Technologies for the Cement Industry.'' Chapel Hill, NC. September 19, 2000. This report updates information in the ''Alternative Control Techniques Document—NO_X Emissions from Cement Manufacturing'' (EPA–453/R–94–004), which was the primary reference used in preparing the cement kiln portion of the proposed Federal Implementation Plan (FIP) rulemaking. The report includes updated information on uncontrolled NO_X emissions from cement kilns and on the current use, effectiveness and cost of NO_X controls.

(14) A May 3, 2001, letter from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Lori F. Kaplan, Commissioner, IDEM.

As noted in the EPA's NO_X SIP Call checklist, the key elements of an approvable submittal are: A budget demonstration; enforceable control measures; legal authority to implement and enforce the control measures; adopted control measure compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; and elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The documents related to the NO_X SIP Call are available to the public on EPA's website at: *http://www.epa.gov/ttn/otag/sip/related.html.*

F. Does Indiana's NO_X Emissions Control Plan Meet All of the Federal NO_X SIP Call Requirements?

Based on EPA's review, Indiana's plan meets the Phase I NO_X SIP Call requirements.

EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. EPA had previously determined, on December 26, 2000, that Indiana had failed to submit a SIP in response to the NO_X SIP Call, thus starting an 18-month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a FIP within 24 months(65 FR 81366). Through this action, both the sanctions clock and EPA's FIP obligation are terminated.

G. What Changes Did Indiana Make To Its Proposed NO_X Emissions Control Regulations Before Finalizing?

In our July 2, 2001, proposal, we discussed changes that the State had made or intended to make to its proposed NO_X emissions control plan including the rules at 326 IAC 10–3 and 10–4. Each of these changes is approvable, as discussed below. For additional information on these issues, please see the July 2, 2001, proposed rulemaking (66 FR 34864).

1. Changes Made Regarding Units Affected Under the Section 126 Rulemaking

Today's final rulemaking does not have any direct bearing on the applicability of the Section 126 rulemaking. We are not amending the Section 126 rule at this time. However, based upon coordination with EPA, Indiana made changes to its proposed NO_X rule so that the rule could potentially supplant the Section 126 rule as of May 1, 2004. In order to make a transition of this sort, EPA would need to complete a future proposal and final rulemaking to amend the Section 126 rule.

IDEM made the following changes to its proposed rule to make it more compatible with the Section 126 rulemaking. These changes and how they comport with the Section 126 rule are discussed in additional detail in EPA's proposal.

a. IDEM's proposed rule included a provision at 326 IAC 10–1, which stated that ''A unit subject to 40 CFR [Part] 97 shall be subject to the requirements of this rule on May 1, 2004 and shall no longer be subject to 40 CFR [Part] 97 as of that date.'' An Indiana State rule can not operate to withdraw the Section 126 findings which are codified at 40 CFR Part 97. The findings can only be modified through further rulemaking under the Section 126 rule. In the final rule, IDEM removed the provision pertaining to the applicability of 40 CFR Part 97.

b. Indiana's proposed rule did not contemplate how compliance supplement pool (CSP) allowances would be allocated under the Section 126 rulemaking. In EPA's proposal, we noted that, in order for us to contemplate a future action to amend the Section 126 rule, the State NO_X rule would need to take into consideration the number of CSP allowances that are available under the Section 126 rule and

limit source's usage of CSP allowances in a manner at least as stringent. In its final rule, IDEM limits the number of compliance supplement pool allowances that can be used in 2003 to 2,454—the number of compliance supplement pool allowances available under the Section 126 rulemaking.

c. Indiana's proposed rule only allowed sources to apply for early reduction credits (ERCs) for reductions made in 2002 and 2003. Since the Section 126 rulemaking allows sources to apply for ERCs for reductions made in 2001, Indiana revised its final rule to also allow sources to apply for ERCs based on 2001 reductions. EPA addressed a second point regarding ERCs in our July 2, 2001 proposal. We pointed out that if IDEM were to have sole responsibility for distribution of the CSP and correspondingly the ERC distribution, Section 126 sources could not be granted ERCs for reductions made in 2003 in response to the Section 126 rule. In both the proposed and final rule, IDEM included a restriction on ERCs that the reductions could not be otherwise required by the Clean Air Act. In addition, as explained below, Indiana revised its rule to specify that for units subject to Section 126, all CSP allowances must be allocated by March 31, 2003 (i.e., before the start of the 2003 ozone control period).

d. IDEM's proposal allowed distribution of CSP allowances up to March 31 of the year after control measures were implemented. In EPA's proposal, we noted that for Section 126 sources making early reductions, the State could distribute compliance supplement pool allowances up to April 30, 2003. For all other sources making early reductions, the State could distribute compliance supplement pool allowances up to May 30, 2004. The State's final rule specifies that the issuance of CSP allowances shall be completed by March 31, 2003 for Section 126 sources and March 31, 2004, for non-Section 126 sources.

2. The 25-Ton Exemptions

Indiana's rule, 326 IAC 10–4, Nitrogen Oxides Budget Trading Program Section, includes in subsection 10–4–1(b), the 25-ton exemption from the NO_X SIP Call model rule and two additional exemptions. One of these alternatives relies on Continuous Emission Monitoring System (CEMS) data. In this exemption, units can use CEMS data to demonstrate that the unit is not emitting more than 25 tons during an ozone season. In Indiana's proposed rule, it was not clear that, if units were exempted based upon CEMS, those units would be required to continue monitoring with CEMS. For this exemption to provide sufficient assurance that these units will not emit more than 25 tons per season, Indiana revised the final rule to require these units to monitor according to 40 CFR Part 75, subpart H, even while they have the exemption.

Indiana's second alternative exemption provides for consideration of how much natural gas and/or fuel oil was burned during the ozone control period, as opposed to assuming that all of a unit's heat input is from the fuel with the higher emission factor. Indiana allows units this flexibility by requiring recordkeeping verifying the amount of each fuel being burned during the ozone control period. This satisfies EPA's concern discussed in the proposal that this alternative must effectively limit a unit's potential NO_X emissions to less than 25 tons during an ozone control period.

In addition, when a unit receives a 25-ton exemption, the unit's emissions must be removed from the trading program budget to avoid double counting. IDEM's final rule specifies the mechanism that will be used to ensure that the emissions from these sources are removed from the trading budget. Indiana has accounted for this by establishing that, once a unit is exempt, EPA will deduct a number of allowances from a general account specified by the owner and operator equal to the unit's permitted limit until the three-year allocation period has ended. When Indiana determines allocations for the next three-year period, it will deduct ''off the top'' from the trading budget a number of tons equal to the permitted limits of the exempt units.

3. Definition of ''Maximum Design Heat Input''

Indiana's final rule revises the definition of ''maximum design heat input'' so that it is consistent with the NO_X SIP Call in that it is based solely on physical characteristics and not permitted limits.

4. Definition of ''NO_X Budget Trading Program''

Indiana's final rule adds language to the definition of '' NO_X budget trading program'' to indicate that trading may only occur between sources that are participating in an EPA-administered trading program.

5. Definition of ''Percent Monitoring Data Availability''

Indiana revised the definition ''percent monitoring data availability'' so that it is based on a unit's actual total operating hours instead of the total potential operating hours in the season. The definition in the State's proposed rule was not correct. (EPA notes that the definition of ''percent monitoring data availability'' in part 97 is also incorrect, and intends to take action to correct the definition.) Under Indiana's proposed rule definition, a source would determine the percent availability based on the assumption that it is operating the entire ozone season. With this definition, a unit could fail to meet the 90 percent monitoring data availability requirement even if its monitors were available 90 percent of the time it operated. Thus, Indiana revised the definition as described above.

6. Monitoring Requirements

In its final rule, Indiana revised the date that monitoring is required to begin to May 1, 2003. Beginning monitoring at the beginning of the ozone season a year before compliance is required will ensure that when Indiana updates its allocations, it has a full year of data to use. Requiring monitoring a year earlier than compliance also allows sources to ensure that their monitoring and reporting systems are working and accurate before the program begins, thus avoiding unnecessary penalties once the trading program has begun.

7. Indiana's New Source and Energy Efficiency and Renewable Energy ''Set-Asides''

In its final rule, IDEM clarified that the allowances for the new source and energy efficiency and renewable energy ''set-asides'' outlined in 326 IAC 10–4–9(e) come from the trading program budget.

8. Penalties

Indiana added language equivalent to the following from 40 CFR Section 96.54(d)(3)(i) to its final rule:

> For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation, unless the owners and operators demonstrate that a lesser number of days should be considered.

The language establishes the maximum number of days in which penalties could be sought for a violation. However, EPA notes that if an agency were to seek penalties for a violation, an owner or an operator may demonstrate that a lesser number of days should be considered.

9. 326 IAC 10–3 Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10–3 requires emission reductions at cement kilns. Model rules for cement kilns were not a part of the NO_X SIP Call. For this reason, the State used the proposed October 28, 1998, NO_X Federal Implementation Plan (FIP) as a starting point in developing its rules (63 FR 56393). Since much of the analysis and background materials for the proposed FIP are germane to cement kilns, as noted below, EPA also used these materials in its review of the State's submittal.

326 IAC 10–3–1 Applicability

Indiana's proposed rule contained a provision, 326 IAC 10–3–1(b), that would have exempted cement kilns covered by the rule from the Clark and Floyd NO_X Reasonably Available Control Technology (RACT) rules at 326 IAC 10–1. EPA informed Indiana that 326 IAC 10–3 can only supercede the Clark and Floyd NO_X RACT rules at 326 IAC 10–1 if the State either demonstrates that 326 IAC 10—3 is as stringent as 326 IAC 10–1 or provides photochemical dispersion modeling that shows the area remains in attainment without the RACT controls.

In response to EPA's comment, in the final adopted rule, Indiana significantly narrowed the scope of the provision and asserted that, for the group of cement kilns affected, 326 IAC 10–3 is as stringent as 326 IAC 10–1. Indiana narrowed the scope of the provision such that only cement kiln units operating low-NO_X burners would be exempt. Furthermore, the final adopted rule states that those units are only exempt from the emission limit in 326 IAC 10–1 and only exempt during the ozone control period.

Based on the expected emissions achievable for cement kilns with low-NO_X burners installed, emissions are expected to be less than required for the same type of kilns under 326 IAC 10–1. The following table summarizes the emission limits in 326 IAC 10–1 compared to the expected emissions from a cement kiln with low-NO_X burners installed.

TABLE 6.—LOW-NO_X BURNER CEMENT KILN STRINGENCY

Cement kiln type	326 IAC 10–1, pounds per ton of clinker		326 IAC 10–3, pounds per ton of clinker
	30 day limit	Daily limit	Expected emissions from installation of low-NO_X burners (based on proposed NO_X FIP materials and 30 day averaging.
Preheater kiln	4.4	5.9	3.8
Long dry kiln	6.0	10.8	5.1

As discussed in the proposed October 28, 1998, NO_X FIP, EPA expects that low-NO_X burners can achieve a NO_X emission rate of 3.8 pounds per ton for any preheater kiln, and 5.1 pounds per ton of clinker for any long dry kiln, averaged over 30 days. The RACT rule requires 4.4 and 6.0 pounds per ton of clinker produced on a thirty-day average basis, respectively, and 5.9 and 10.8 pounds per ton of clinker produced on a daily basis, respectively.

On a thirty-day rolling average basis, low-NO_X burners are expected to have lower emissions than the current requirement in the RACT rule. The expected emission rate is also 64 percent of the daily RACT requirement for preheater kilns and 47 percent of the daily RACT requirement for long dry kilns. Low-NO_X burners are a type of technology that, once installed, cannot be bypassed or taken off-line unless the entire kiln is shut down. 326 IAC 10–3 requires that the low-NO_X burners be installed, operated and maintained. Keeping these burners properly maintained should ensure that they provide a relatively constant effect on NO_X emissions. Therefore, EPA believes that the significantly lower expected emissions from cement kilns with low-NO_X burners installed in Clark and Floyd Counties should ensure that 326 IAC 10–3 is as stringent as the applicable emission limits in 326 IAC 10–1.

326 IAC 10–3–3 Emission Limits

In its proposed rule, IDEM included an emission limit option at subdivision(a)(2), in which a unit could meet emission limits that were determined to be the equivalent of 30 percent reduction from the industry-wide average in the FIP proposed October 21, 1998(63 FR 56393). The proposed FIP and the supporting documents have been used as tools for evaluating cement kiln provisions in State rules. While EPA agrees that the emission limit option can be provided, it was not proposed as part of the FIP and certain elements need to be incorporated into the State's rule to make it viable. The preamble to the FIP listed these emission limits based on a 30-day average. The State's rationale for providing seasonal limits for these sources was based on the fact that the NO_X SIP Call addresses regional transport on a seasonal basis. EPA has reconsidered the averaging time for these limits and determined that a seasonal average can be appropriate as long as the State adds compliance language to indicate that if the limit is exceeded at any time in the season, it constitutes a separate violation for every day in the season unless the unit can demonstrate otherwise. IDEM's final rule includes this language.

Under 326 IAC 10–3–3(a)(3) of its proposed rule, IDEM included an emission limit option which would allow a reduction equivalent to 30 percent subject to IDEM and EPA approval. EPA agrees that again, this is a reasonable approach to achieving the emissions decreases intended by the NO_X SIP Call. The approach in the State's proposed rule is a variation of the industry-wide average emissions rate provision described in the proposed FIP. It uses actual, measured uncontrolled emissions to set the

baseline rate and then requires a 30 percent reduction from that baseline.

While this approach provides flexibility to sources and may reduce costs, we are concerned that the site-specific emissions baseline needs to be carefully determined. Due to the large variability of emissions at cement kilns cited in comments we received on the FIP proposal, and confirmed in the September 19, 2000, EC/R Incorporated report referenced above, we believe that short-term emissions testing is not appropriate for establishing a baseline or a seasonal emission average for this compliance option. An unduly high emissions reading with a short-term test could lead to a minimal emissions reduction requirement. Conversely, an unduly low emissions reading could lead to an unrealistically high emissions reduction requirement. For this reason, in our proposed rule we noted that Indiana must require sources to establish baseline emissions with a CEMS or require in its rule that the 30 percent reduction be measured from the industry-wide average—the resulting emission limits being those required in 326 IAC 10–3–3(a)(2). The State has followed the second approach in its final adopted rule.

326 IAC 10–3–4 Monitoring and Testing Requirements

As discussed above, EPA believes IDEM's additional compliance options at 326 IAC 10–3–3(a)(2) and (a)(3) to be reasonable, provided reliable seasonal emission averages can be determined. If the cement kiln is complying through subdivision (a)(2) or (a)(3), it needs to determine the seasonal average using an agreed-upon reliable mechanism such as CEMS data. This is due to the variability in NO_X emissions from cement kilns, as referenced above. In discussions with the State, it has agreed that CEMS is the only viable option for compliance with these provisions. As a result, IDEM has included the requirement for CEMS, if the unit is complying with one of these emission limit options, as part of its final adopted rule.

326 IAC 10–3–5 Recordkeeping and Reporting

Under Indiana's proposed rule, sources that could comply by meeting emission limits on a pound of NO_X per ton of clinker basis were not required to keep daily cement kiln production records needed to ensure compliance with the emission limits. EPA noted this deficiency in our proposal and also noted the revised language that Indiana had included in its final adopted rule to address this issue. IDEM added language to its final adopted rule to require sources meeting emission limits to report their daily cement kiln production records.

Blast Furnace Gas Units

The final adopted rule includes the regulating of blast furnace gas units under 326 IAC 10–3, as opposed to 326 IAC 10–4, as originally proposed. Since these units have a relatively low emission rate on a lb/mmBtu basis, IDEM was not anticipating requiring them to make reductions under the trading program. Likewise, IDEM has set the emission factor in 326 IAC 10–3 based on NO_X SIP Call uncontrolled emissions. Since, as discussed further in the proposal, this modification does not impact the reductions being achieved under IDEM's rule, EPA is approving this rule modification as part of Indiana's submittal.

10. General SIP Requirements

Indiana's final submittal fully addressed the general requirements required under the NO_X SIP Call for a SIP revision including: that resources are available to implement the program, that the State meets the data availability requirements of 40 CFR 51.116, that the SIP provides for compliance with the annual and triennial reporting requirements set forth in 40 CFR 51.122, that the State has the legal authority to carry out the SIP revision, and that the general testing, inspection, enforcement and complaint mechanisms required under 40 CFR 51.121(f)(1) and 40 CFR 51.212 are in place to support implementation of this rule.

11. Definition of ''Repowered Natural Gas-Fired Units''

IDEM's final adopted rule adds new language to define ''repowered natural gas-fired units.'' This term is defined for the purpose of determining the allowance allocations for these units. Since the addition of this term only affects the way that allowances are allocated, this rule modification is acceptable.

12. Utilization Correction for New Units

IDEM's submitted draft rules would have required an additional deduction of allowances from new sources. The deduction would have been to account for actual utilization of the unit as opposed to the projected utilization. This interpretation was more stringent than necessary as it could have potentially removed NO_X allowances permanently from the trading program for emissions that had not occurred. The NO_X SIP Call model rule requires a similar correction based on actual utilization, but intends for the excess allowances to be returned to the set aside instead of completely removing them from the trading program.

The State's final adopted rule takes a slightly different approach. It requires any allowances remaining in a new NO_X budget unit's account at the end of each season to be returned to the new source set aside. Although this approach is different from that used in the model trading rule, it should ensure the integrity of both the trading program and Indiana's NO_X budget.

13. Centralized Recordkeeping

IDEM's final adopted rules allow recordkeeping at a central location under specific conditions. EPA discussed these recordkeeping requirements at length with the State. These provisions are only acceptable, as indicated in our proposal, under certain circumstances, *i.e.*, for sources not participating in the trading program and not exempted from the trading program based on Part 75 monitoring. The State chose to retain the provisions throughout the rule (since it had determined that the centralized recordkeeping could be acceptable for the State). However, the State also added language to clarify that the central recordkeeping provisions do not override or alter any of the record retention requirements for a source under 40 CFR Part 75.(Since the recordkeeping requirements in 40 CFR Part 75 need to be required for federal SIP approval.)

These recordkeeping requirements are included in three parts of the final adopted rule and apply to: (1) Units burning only natural gas or fuel oil during the ozone control period with potential NO_X mass emissions for the ozone control period of twenty-five (25) tons or less; (2) retired units; and (3) NO_X Budget Units covered by the trading program. As mentioned above, to the extent these units are required to comply with 40 CFR Part 75, these centralized recordkeeping provisions do not alter those requirements. For example, each unit under the trading program must, as required by Part 75, maintain its records on-site. Furthermore, any unit with an exemption based on Part 75 monitoring, demonstrating 25 tons or less of emissions, must maintain records on-site and in accordance with Part 75. Since the State has been explicit in its rule that the 40 CFR Part 75 requirements stay in place, EPA is approving the limited centralized recordkeeping requirements.

14. Allocation Methodology

The final adopted rule incorporates several changes to the State's NO_X allowance allocation methodology. The State has provided more concise definitions of the projects that qualify for allowances from the energy efficiency and renewable energy set aside, for example. The State has also replaced the allocation methodology for existing non-EGUs with a table specifying the allowances that will be allocated to each non-EGU. EPA has reviewed the revisions to the allocation methodologies and determined that they do not adversely affect the State's demonstration that it meets the NO_X SIP Call budget. The changes only affect how the allowances will be allocated and do not affect the number of allowances that will be allocated. For these reasons, these changes are being approved as part of Indiana's NO_X SIP Call Phase I submittal.

II. What Are the Public Comments on EPA's Proposal?

EPA published a proposed rulemaking on July 2, 2001, (66 FR 34864) to approve, as a SIP revision, the plan Indiana submitted in response to the NO_X SIP Call. The proposal provided a 30-day public comment period, which ended on August 1, 2001. EPA received comments from the following parties: A citizen; Indianapolis Power and Light Company (IPL); and the Natural Resources Defense Council and the Hoosier Environmental Council.

Comment 1: Comment received from a citizen. The commentor asserts that the definition of ''ozone control period'' should be inclusive of every day in the year. The commentor notes that nitrogen dioxide and other oxides of nitrogen are harmful at all times and it is not appropriate to only require controls to be used during the ozone control period. Furthermore, the commentor claims, once EGUs demonstrate the ability to operate at 0.15 lb/mmBtu, they have an obligation to equal or better that performance on a 365-day averaging period. The commentor believes there is an inequity with mobile sources which are required to maintain their controls over broad ranges of operation.

Response 1: EPA recognizes that control of NO_X emissions would likely produce non-ozone benefits, as well as ozone benefits. However, the commentor's suggestion that EPA define a control period on an annual basis is outside the scope of this rulemaking. EPA issued the NO_X SIP call to address the failure of certain SIPs to prohibit sources from emitting NO_X in amounts that contribute significantly to nonattainment (or interfere with maintenance of attainment) of the ozone National Ambient Air Quality Standards (NAAQS) during the ozone season. Because ozone formation is a summer season problem, the rule focuses on obtaining the necessary reductions during those months when a potential public health problem exists due to high concentrations of ambient ozone.

Comment 2: Comments received from Indianapolis Power and Light (IPL). The commentor notes that changes to the Indiana SIP were made in response to the SIP Call and that the SIP Call was based on EPA models of regional ozone transport. The commentor claims that EPA's modeling is unreliable and inconsistent. The commentor questions the linkage between Indiana and New York nonattainment areas. The linkage from Indiana to New York was found to be significant, but the linkages from Indiana to Pittsburgh and Philadelphia (which are both closer to Indiana than New York) were not found to be significant. The commentor claims that ozone passes over Kentucky, Ohio, and Pennsylvania without having a significant effect. The commentor states that the modeled predictions for Indiana are ''statistically meaningless'' and concludes that the Agency is ''pushing the computer-generated data beyond the limits of its reliability.'' The commentor asserts that these issues are at the core of the SIP Call, and that EPA is not authorized to lock in requirements for NO_X reductions in Indiana based on this modeling analysis.

Response 2: Most fundamentally, Indiana's obligation to submit the present SIP revision derives from the NO_X SIP Call rulemaking. That rulemaking was premised on air quality modeling conclusions that were subjected to notice and comment. The U.S. Court of Appeals for the D.C. Circuit, in *Michigan* v. *EPA*, 213 F.3d 663, 673 (D.C. Cir. 2000), *cert. den.*, 121 S. Ct. 1225, 149 L. Ed. 135 (2001), generally upheld the rulemaking, as well as the air quality modeling conclusions. As a result, EPA does not consider air quality impacts to be an open issue in the present rulemaking. In any event, IPL made a very similar comment regarding the modeling results in the Section 126 rulemaking. EPA's response is provided on pages 79–83 of the ''Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport'' (April 1999).[1]

Comment 3: Comment received from IPL. The commentor claims that Indiana statutes provide that a person who violates air pollution control laws is liable for a civil penalty not to exceed twenty-five thousand dollars, and that IDEM does not have the authority to implement a rule where each ton of NO_X per day is a violation and where that violation can be spread across the entire 153 days of the ozone control period. It was arbitrary for the EPA to require the State to adopt these provisions.

Response 3: The State rule defines what constitutes a violation in the same manner as the federal law at 40 CFR 96.6(c)(2) and 96.54(d)(3). Authority to incorporate these provisions into State rules can be found in IC 13–17–3–4, which provides that the Air Pollution Control Board (Board) shall adopt rules that are necessary to implement the CAA, and in IC 13–17–3–11, which provides that the Board has the authority to adopt rules under discretionary authority granted to the State under the CAA and its regulations. Finally, IC 13–30–4–1 provides explicitly that a person who violates any provision of a rule adopted by the Board is liable for a penalty *per day per violation* (italics added for emphasis).

EPA did not arbitrarily determine that these requirements needed to be included in state SIPs. EPA has required the State to adopt these provisions because of the nature and inherent flexibilities of the NO_X SIP Call. Because the State's NO_X rule at 326 IAC 10–4 is based on a trading program that caps emissions, it is appropriate that every ton of emissions over a source's available allowances should be considered a separate violation. Otherwise, the penalty might not be sufficient to remove the economic benefit of noncompliance and deter excess emissions. Furthermore, it makes sense that a source that emits fifty excessive tons should pay a higher

[1] It should be noted that IPL asserts that the model predicts that ozone passes over Kentucky, Ohio, and Pennsylvania without causing a signficant effect. In fact, both the UAM–V model and CAM_X model showed that Indiana emissions contribute to 1–hour ozone exceedances in the Cincinnati-Hamilton area, which, at thet ime, was a bi-state nonattainment area in Ohio and Kentucky. It was the only nonattainment area in Ohio. In Kentucky, there was on additoinal nonattainment area, the Louisville area. The Louisville area is a bi-state area with a portion in Kentucky and a portion in Indiana. It did not make sense to analyze contributions from Indiana to the Louisville area since the area includes two Indiana counties. See EPA's September 23, 1998 Air Quality Modeling Technical Support Document Appendix C, page C–15 [Docket Number A–96–56, VI–B–11].

penalty than a source that emits one excessive ton.

Additionally, the rule provides that each day of the ozone season constitutes a violation because the rule caps emissions on an ozone season basis and does not assign the emissions of discrete tons to a particular day. If the source exceeds its allowances for the ozone season, then each day of that season is a separate violation. However, the rule does provide flexibility by allowing the owners and operators of the unit to demonstrate that a lesser number of days should be considered.

EPA believes that financial penalties along with an automatic allowance offset are sufficient and appropriate for ensuring compliance with the NO_X budget and the emission limit. The allowance deduction is designed to ensure that non-compliance is a more expensive option than compliance. However, in addition to the allowance offset, the states must also be able to impose financial penalties if necessary in response to violations of the NO_X Budget Program. In fact, some violations (e.g., of monitoring requirements) may not result in any excess emissions nor any offset. In a multi-state program, it is important that each individual state's regulation include the same provisions in order to encourage similar treatment of similar instances of non-compliance regardless of location and to provide a level playing field for all NO_X Budget units. Thus, if a state chooses to adopt the model rule's approach, the SIP submission must include the offset provisions and the financial penalty provisions contained in the model rule. Criteria for SIP approvability are outlined in section VI.A.2 of the preamble to the October 27, 1998 NO_X SIP Call (63 FR 57355).

A NO_X Budget unit with excess emissions for a control period may be charged, under the model rule, with 153 days in violation. However, the owners or operators of these units have the option of demonstrating that the number of days of violation was less than 153 days.

Comment 4: Comments received from The Natural Resources Defense Council and Hoosier Environmental Council. The commentor states that the Indiana NO_X SIP Call appears to waive the May 1, 2003 compliance date of the Section 126 rulemaking. The commentor requests that EPA clarify the overlap between Section 126 and the NO_X SIP Call.

Response 4: Final approval of the Indiana NO_X SIP call does not amend the applicability of the Section 126 rulemaking in any way. Units that are affected under the Section 126 rulemaking must comply with the applicable compliance date in the Section 126 rulemaking. Only if EPA takes action to amend the Section 126 rule would the applicability of that rule change. EPA is not taking that action today. Because of the adjustments that IDEM made to its NO_X rule, EPA may be able to take an action to amend the Section 126 rule in the future so that it is only applicable to those sources for at most one year, until May 1, 2004; at which point Indiana's NO_X rule would take over and require reductions as stringent as those required by the Section 126 rule.

III. Final Action

A. What Action Is EPA Approving Today?

EPA is approving revisions to Indiana's ground level ozone SIP which Indiana submitted in final on August 20, 2001 and supplemented on September 19, 2001. These SIP revisions include two new regulations, a budget demonstration and supporting materials. The two new regulations are 326 Indiana Administrative Code (IAC) 10–3, the ''Nitrogen Oxide Reduction Program for Specific Source Categories,'' and 326 IAC 10–4, the ''Nitrogen Oxides Budget Trading Program.'' EPA has determined that Indiana's submittal is fully approvable as meeting the Phase I NO_X SIP Call requirements.

EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. EPA had previously determined, on December 26, 2000, that Indiana had failed to submit a SIP in response to the NO_X SIP Call, thus starting a 18-month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a FIP within 24 months(65 FR 81366). This finding stops both the sanctions clock and EPA's FIP obligation.

B. What Is the Impact of Today's Action on EPA's Finding Under the Clean Air Act Section 126 Rule?

Today's action does not have any impact on EPA's finding under Section 126 of the Clean Air Act. Indiana's submittal does require reductions at sources covered under the Section 126 rulemaking and will be evaluated in the future to determine if it is appropriate for EPA to take action to amend the applicability of the Section 126 rulemaking. However, today's action does not address this issue.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(144) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(144) On August 20, 2001 and September 19, 2001, Indiana submitted a plan in response to Phase I of the NO_X SIP Call. The plan includes Indiana's Phase I NO_X Budget Demonstration and supporting documentation including initial unit allocations and two new rules: 326 IAC 10–3 and 326 IAC 10–4.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 3: Nitrogen Oxide Reduction Program for Specific Source Categories (326 IAC 10–3). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

(B) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 4: Nitrogen Oxides Budget Trading Program (326 IAC 10–4). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

[FR Doc. 01–27931 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–059–RECL, FRL–7093–4]

Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern County Nonattainment Area and Extension of Attainment Date; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to change the boundary for the San Joaquin Valley (SJV) serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. EPA is extending the attainment deadline for the new East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

EPA is taking final action to find that the SJV area did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline. As a result, the SJV ozone nonattainment area with its revised boundaries is reclassified by operation of law as a severe area. The State must submit by May 31, 2002, a severe area ozone nonattainment plan for the SJV (now excluding the East Kern County ozone nonattainment area) that provides for the attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. This plan must meet the specific provisions of CAA section 182(d).

EPA is taking final action to find that the approved serious area ozone State Implementation Plan (SIP) for the SJV has not been fully implemented. As a result of this finding, the State must adopt and implement the specified measures by November 15, 2002 or be subject to sanctions pursuant to sections 179(a) and (b) of the CAA. This finding and any potential sanctions do not apply to the newly established East Kern County ozone nonattainment area, where the SIP is being fully implemented.

EFFECTIVE DATE: December 10, 2001.

ADDRESSES: The rulemaking docket is available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286, or *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2000, EPA proposed to find that the SJV serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the attainment deadline for serious ozone nonattainment areas under CAA section 181(a). 65 FR 37926. The current SJV nonattainment area includes the counties of San Joaquin, Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.301. EPA also proposed to find that the SJV SIP had not been fully implemented, because the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) had failed to adopt and implement six measures by the deadlines in the SIP.

During the public comment period for the proposal, EPA received comments requesting that EPA remove the eastern portion of Kern County from the SJV ozone nonattainment area and designate it a separate ozone nonattainment area. On August 28, 2000, the California Air Resources Board (CARB) formally requested that EPA create a separate ozone nonattainment area for East Kern County and grant this area two 1-year attainment date extensions.

EPA found the State's request compelling and, on May 18, 2001, issued a reproposal to revise the SJV ozone nonattainment area by changing its boundaries to remove eastern Kern County.[1] 66 FR 27616. In order to reflect this proposed boundary change, EPA reproposed the Agency's finding that the remaining portion of SJV did not attain the ozone NAAQS by the statutory deadline and, accordingly, would be reclassified by operation of law as a severe ozone nonattainment area if EPA finalized the finding. EPA proposed that the East Kern County ozone nonattainment area would keep its serious classification because the area had not recorded more than one exceedance of the ozone NAAQS over the past two years and the East Kern County area otherwise qualified for two 1-year extensions of the November 15, 1999 attainment deadline pursuant to CAA section 181(a)(5). EPA therefore proposed that the attainment deadline for East Kern County ozone nonattainment area be extended to November 15, 2001.

II. Response to Public Comments and Final Action

In this document, EPA is responding to comments submitted in response to the initial proposal (65 FR 37926) and the reproposal (66 FR 27616).

A. Establishment of East Kern County as a Separate Ozone Nonattainment Area With a Serious Ozone Nonattainment Area Classification and an Extended Attainment Date

As discussed in the reproposal, the public comments submitted in response to the initial proposal supported removal of East Kern County from the SJV ozone nonattainment area and establishment of this new area as a serious ozone nonattainment area with an extended attainment deadline. No commenters on either the initial proposal or the reproposal opposed these actions. Therefore, for the reasons set forth in the reproposal (66 FR 27617–27620), EPA is today taking final action to grant the State's requests: (1) To split the SJV ozone nonattainment area into two separate ozone nonattainment areas pursuant to CAA section 107(d)(3)(D); (2) to retain for the new East Kern County ozone nonattainment area the serious nonattainment area ozone classification; and (3) to grant two 1-year attainment date extensions pursuant to CAA section 181(a)(5), thus establishing an attainment deadline of November 15, 2001.

B. Finding of Failure To Attain for the San Joaquin Valley Ozone Nonattainment Area

EPA received no comments opposing the Agency's finding that the SJV ozone nonattainment area failed to attain the 1-hour ozone standard by the November 15, 1999 deadline. Accordingly, and for the reasons set forth in the proposals (65 FR 37927–37928 and 66 FR 27617), EPA is today issuing the final finding under CAA section 181(b)(2)(A).

C. Attainment Deadline for the San Joaquin Valley Ozone Nonattainment Area

As a consequence of EPA's finding of failure to attain, the SJV ozone nonattainment area is reclassified by operation of law to severe. The CAA provides that severe ozone nonattainment areas must attain the ozone NAAQS as expeditiously as practicable, but no later than 15 years after enactment of the 1990 CAA Amendments, or November 15, 2005. CAA section 181(a)(2) also establishes a ''severe 17'' classification for areas with a 1988 ozone design value between 0.190 parts per million (ppm) and 0.280 ppm.[2] Areas meeting this criterion are required to attain the ozone NAAQS as expeditiously as practicable but no later than 17 years after enactment of the 1990 CAA Amendments (i.e., by November 15, 2007).

In the reproposal, EPA noted that the design value for the SJV ozone nonattainment area is 0.161 ppm. 66 FR 27617. Although this value is below the CAA criterion for the severe-17 classification, EPA referenced a State suggestion that attainment by 2005 may not be possible for the SJV ozone nonattainment area, given the area's air quality problem. Accordingly, EPA solicited comment on the viability of the 2005 deadline, and on any legal, policy, and technical rationale for allowing a 2007 attainment deadline.

1. Comments Supporting a 2007 Attainment Deadline

State legislators, local governments, CARB, and SJVUAPCD provided the following arguments in support of a severe-17 classification.

(a) It is not feasible to attain by 2005 based on preliminary photochemical modeling which identifies the need for an additional 150 tons per day (tpd) of the two principal ozone precursors—volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). This is a 30 percent reduction in ozone precursors beyond projected 2005 levels with all adopted controls. CARB observed that the only extreme ozone nonattainment area in the country, the South Coast (metropolitan Los Angeles) area, requires the same 150 tpd reduction of VOC emissions to attain but is allowed, by its CAA classification, until 2010 to achieve these reductions.

(b) SJV's design value is higher than the design value for all other areas in the country with a 2005 attainment deadline. In addition, the magnitude of the attainment task is reflected in the number of days over the standard. SJV has not only a higher design value but also a greater number of days over the standard compared to other areas with a 2007 deadline. Although the 1990 CAA Amendments based classifications solely on design value, it is relevant to consider the fact that SJV had at that time the third highest number of exceedance days in the country. SJV has already achieved larger emissions reductions than have any areas that are assigned a 2007 date, both in the percentage of emissions reduced and the actual tons of emissions reduced. SJV has achieved these reductions but has not been able to reduce its design value. This makes clear that SJV has one of the most severe ozone problems in the country, requiring additional time to achieve the NAAQS.

(c) Any new controls would have to be implemented by 2003, which is the first year that counts towards a 2005 attainment date. The SJV area already has in place stringent controls. More time is needed for technology advancements in order to implement the measures required to bring SJV into attainment. More time will also decrease the impact of new controls on businesses.

[1] The new boundary line requested by the State is the same as the current boundary between the Kern County and San Joaquin Valley air districts and generally follows the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. The precise description of the new boundary appears at the end of this notice in the revision to 40 CFR part 81.

[2] The 1-hour ozone NAAQS is 0.12 ppm. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three-year period. An area's design value is the highest of the design values from the area's monitors. A design value is one indication of the severity of the ozone problem in an area. It is also used in determining the level of emission reductions needed to attain the standard.

(d) Additional time is also critically needed to achieve mobile source fleet turnover to meet more stringent standards, and to secure and distribute incentive funding to support replacement of older vehicles. The problem is greater because State incentive money to retrofit engines is being diverted to buy emissions offsets for new electricity generators required to meet the energy crisis.

(e) New State and federal controls on heavy-duty trucks, low emission vehicles, and reformulation of diesel fuel will be much more effective in 2007 than in 2005 due to phase-in schedules, since many of these controls go into effect in 2004 and the penetration rate in the first two years is extremely low.

(f) A 2007 deadline meets the CAA requirement for attainment as expeditiously as practicable based on SJV's air quality, emission reduction, and control strategy issues.

(g) The SJV ozone nonattainment area is greatly impacted by pollution from the San Francisco Bay Area. Assuming that the Bay Area is granted a 2006 attainment date, the SJV's attainment date should be later.

(h) Emissions reductions from post-2003 federal Congestion Mitigation and Air Quality (CMAQ) transportation funding will be needed for attainment, and these funds cannot be secured until the Transportation Equity Act is reauthorized, which is expected in 2004.

(i) Smart Growth policies have the potential to reduce emissions but require more time for implementation than would be available assuming a 2005 attainment deadline.

(j) Sources under federal control are a significant fraction of the SJV emission inventory, especially interstate trucks, farm and construction equipment, and locomotives, and the problem is exacerbated by the fact that the sources are particularly active in the harvest (and smog) season. Given the scale of reductions needed for attainment, the federal government must reduce its share of the inventory. Like California, EPA will need to consider not just new standards but also retrofits and accelerated turnover of the existing fleet. As a regulatory partner, EPA would agree that a 2005 date does not allow sufficient time to accomplish these necessary reductions. The SJV attainment problem is compounded by the presence of two major transportation corridors (Interstate 5 and Freeway 99) and by EPA's failure to enforce adequately the existing national standard for heavy-duty engines and failure to act in a timely manner on the manufacturers' consent degree, resulting in a significant increase in NO_X emissions.

(k) EPA has sufficient authority and discretion under CAA sections 172 and 181 to set a 2007 deadline, based on the severity of nonattainment, and the availability and feasibility of control measures.

2. Comments Supporting a 2005 Attainment Deadline

The Center on Race, Poverty & the Environment (CRPE) and Earthjustice Legal Defense Fund submitted comments opposing the 2007 attainment deadline. These groups stated that EPA lacks the authority to grant an extension of the attainment deadline from 2005 to 2007. The 2005 deadline is explicit in the CAA and so EPA has no administrative discretion to grant an extension beyond that date. In addition to being patently illegal, granting the 2007 deadline would force the millions of Valley residents to breathe dangerous levels of smog at least two years longer than necessary. This 2007 extension would result in human suffering and medical costs far in excess of the temporarily-avoided compliance costs. Granting the SJVUAPCD additional time when it is not implementing its own inadequate plan would reward and perpetuate further inaction. In contrast to the SJVUAPCD, other agencies (such as the South Coast Air Quality Management District) have adopted stringent controls and are on a trajectory to attain the ozone NAAQS, so technical arguments for delaying full implementation of public health protections in the SJV should not be taken seriously.

3. EPA Response to Comments and Final Action

EPA agrees with many of the comments supporting the difficulty of developing a plan to demonstrate attainment of the NAAQS by the 2005 date. This deadline presents a remarkable challenge for an area with SJV's characteristics: meteorology and topography providing diverse conditions favorable to the formation of ozone; large numbers of small emissions sources already subject, in many cases, to stringent controls and, in other cases, capable of further control only through costly retrofit, rebuild, or replacement programs; substantial mobile source and process emissions sources associated with the area's dominant agricultural economy and therefore operating at peak levels during the ozone season; and large interstate transportation emissions from truck and rail operations that are not generally susceptible to control at local and state levels. Equitable considerations suggest that a 2007 attainment deadline might be at least as appropriate for the SJV ozone nonattainment area as for other areas that were assigned severe–17 classifications in accordance with the provisions of 1990 CAA Amendments.

EPA has concluded, however, that the CAA does not provide the Agency authority to set a 2007 attainment deadline for the SJV ozone nonattainment area based on these considerations. When EPA finds that an ozone nonattainment area failed to attain the ozone standard by its attainment date pursuant to section 181(b)(2), that section provides that the area ''shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—(i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).'' The phrase ''in accordance with table 1'' prevents EPA from providing a 2007 attainment date for the SJV in this action because, for the severe area class, table 1 establishes an attainment date of ''15 years after enactment [*i.e.*, 2005].'' CAA 181(a). The 2007 attainment deadline is set forth not in table 1 but in CAA section 181(a)(2), which states: ''Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after the date of enactment of the Clean Air Act Amendments of 1990.'' Thus, the 2007 attainment date is not provided for in Table 1, which is what Congress required EPA to act in accordance with when an area is reclassified pursuant to section 181(b). Consequently, EPA does not believe that it has the authority to provide the SJV with a 2007 attainment date in this action. However, under section 181(b)(3) of the Act, the State may request a reclassification and receive a 2010 attainment deadline in order to have the additional time the State believes is necessary to attain ozone NAAQS.

Although EPA cannot agree with the State and other commenters that the Agency has the discretion to grant the State's request for a 2007 attainment deadline, EPA does agree that attainment by 2005 requires emission reductions from all quarters, and EPA intends to work closely with the State and local agencies to explore opportunities for the federal government to contribute additional controls or other assistance to advance attainment in the SJV ozone nonattainment area.

D. Deadline for Submittal of a Revised SIP Addressing the CAA Provisions for Severe Ozone Nonattainment Areas

1. EPA's Proposal

EPA's initial proposed finding of failure to attain, proposed that the State be required to submit a severe area SIP revision no later than 18 months from the effective date of the area's reclassification. 65 FR 37928. However, EPA also proposed that the SJVUAPCD be required to submit a revised new source review (NSR) rule within 180 days of the final date of the reclassification, in order to ensure that the District's definitions of ''Major Source'' and ''Distance Offset Ratio'' reflect the severe area requirements. 65 FR 37928–37929.

EPA's reproposal noted that CAA section 182(i) authorizes EPA to adjust applicable deadlines as appropriate. EPA proposed a SIP submittal deadline of May 31, 2002, in order to ensure that control measures are put in place as quickly as possible and there is ample time for the measures to take effect before the attainment deadline. The reproposal stated that this deadline is reasonable given the advance notice provided by our initial proposal, issued on June 19, 2000, and the planning efforts already underway at State and local levels. 66 FR 27617.

2. Public Comments

No commenters on the initial proposal addressed the SIP submittal deadline issue. In response to the reproposal, EPA received four comments. The San Joaquin Valley Transportation Planning Agencies Director's Association (TPA) and Tulare County Association of Governments (TCAG) requested that the deadline be changed to August 31, 2002, in order to allow the revised SIP to incorporate updated transportation planning assumptions. TPA also noted that the reproposal's May 31, 2002 deadline is inconsistent with EPA's policy of allowing 18 months for SIP development. The Western States Petroleum Association (WSPA) requested a six-month extension of the SIP sumittal deadline for the following reasons: The May 31, 2002 deadline would not allow enough time for the regulatory review process necessary for new District rules; WSPA has serious concerns about basing a control strategy on a single design-day ozone episode; the Central California Ozone Study (CCOS) is now available but has yet to be fully considered; the SIP needs to focus more on mobile source reduction strategies because previous significant stationary source reductions have not resulted in a corresponding improvement in air quality. Earthjustice supported EPA's May 31, 2002 deadline, noting that this date affords ample time to prepare the revision since it is 30 months after the area's November 15, 1999 attainment deadline.

3. EPA Response to Comments and Final Action

EPA agrees with TPA and TCAG that the revised SIP should include updated transportation emissions and the latest planning assumptions. However, the commenters submitted no evidence demonstrating that these updates cannot be completed in time to be incorporated in a SIP submitted by May 31, 2002. EPA believes that the transportation plan and emissions updates can, in fact, be prepared on this schedule. EPA is also concerned that the SIP needs to be prepared no later than this date in order to provide a reasonable opportunity for the State, local agencies, and affected public to meet the SIP emission reduction milestone requirements for 2002 under CAA section 182(c)(2)(B).

Regarding the WSPA comments, neither the District nor the State commented that the May 31, 2002 deadline would present any of the problems suggested by WSPA. EPA announcements concerning the pending reclassification began in late 1999 and became official in June 2000. This has given the responsible agencies adequate time to plan their rulemaking calendars. EPA acknowledged in its June 2000 proposal that the results from CCOS may not be fully available to meet the SIP deadlines. The planning process is dynamic and new information will continue to be developed even after the CCOS information is available; the State always has the option of revising its SIP based on new information. Regarding mobile sources versus stationary sources, EPA relies on the state to develop a control strategy the takes into account the mix of sources affecting the area. EPA is therefore not extending the SIP deadline, both because neither the State nor the local air pollution control agencies requested the additional time, and because the six-month delay would further postpone reductions and planning efforts necessary for air quality improvements in the SJV.

Therefore, EPA is using the authority provided in the CAA to finalize May 31, 2002, as the SIP submittal deadline. By this date, the State must submit a plan addressing all of the severe area requirements.

As noted in the initial proposal, CAA section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. Pursuant to CAA section 182(i), EPA proposed to adjust this date to coincide with the submittal deadline for the rest of the severe area requirements. EPA is here finalizing that proposal and establishing May 31, 2002, as the deadline for submitting the emissions fee rule responsive to CAA sections 182(d)(3) and 185.

In the initial proposal, EPA proposed to require that the more stringent severe-area NSR rule, which includes a higher offset ratio and lower applicability level, must be submitted no later than 180 days from the effective date of the SJV area's reclassification to severe. Since this 180-day deadline would now approximate the May 31, 2002 deadline set for the comprehensive severe area plan, EPA is not finalizing the proposed 180-day deadline for the NSR rule revision. Instead, the State will be required to submit by May 31, 2002, a revised NSR rule meeting the severe area provisions of CAA section 182(d).

E. Adoption and Implementation of Reasonably Available Control Technology (RACT) Rules

EPA's initial proposal indicated that the revised severe ozone SIP for SJV needed to meet the RACT requirement for sources subject to the new lower major source applicability cutoff of 25 tons per year (tpy), pursuant to CAA section 182(d). As discussed above, the initial proposal set the deadline for submitting the severe ozone SIP as 18 months from the effective date of the reclassification of the SJV to severe, and the reproposal set the deadline as May 31, 2002. In response to the initial proposal, SJVUAPCD indicated that ''the District should be able to adopt RACT rules shortly before the 18-month sanction deadline.'' [3] EPA presumes that this comment indicates that the District expected to be able to meet the rule adoption deadline in the reproposal, which is more than 23 months after the initial proposal was published. EPA is finalizing the May 31, 2002 SIP deadline as applicable to the RACT rule revisions provided in CAA section 182(d) for major stationary sources at the severe area applicability level of 25 tpy.

SJVUAPCD's comment on the initial proposal indicated that the District would set the final RACT compliance dates to coincide with the 2005 attainment date, ''in order to allow as much time as possible for source operators to install controls.'' Under CAA section 172(c)(1), nonattainment

[3] Letter from David L. Crow, SJVUAPCD APCO/Executive Officer, to John Ungvarsky, EPA, dated August 24, 2000.

plans must ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) * * *.'' The SJVUAPCD's RACT compliance schedule should be as expeditious as practicable, both to address this fundamental CAA provision and to speed progress in public health protection. EPA cannot approve RACT compliance schedules that are not as expeditious as practicable but are rather designed to allow as much time as possible for source operators to install controls. Given that the District has known about this RACT requirement since EPA's June 19, 2000 proposal, EPA does not believe that 2005 represents expeditious implementation of the RACT requirement. Neither the State nor District has provided a compelling reason why the new RACT rules could not be implemented prior to 2005. Accordingly, EPA is finalizing the May 31, 2002 deadline for submittal of new RACT rules, and EPA strongly encourages the District to implement the rules within 18 months of the effective date of the reclassification.

F. Transportation Conformity Budgets

1. EPA's Proposal

EPA's initial proposal indicated that the revised SJV attainment demonstration may establish motor vehicle emissions budgets for subareas within the region if the modeling in the SIP shows that attainment will result when all subarea budgets are met. The initial proposal further stated that there would be no allowance for shifting of growth from one subarea to another. 65 FR 37929.

2. Public Comments

In response to the initial proposal, CARB supported a single budget as providing better alignment with the new region wide attainment demonstration, while providing greater flexibility by allowing higher than expected emissions in one portion of the valley to be offset by lower emissions in the rest of the region. On the other hand, several of the SJV transportation planning agencies, TPA, and SJVUAPCD endorsed the establishment of separate budgets for each subarea, with trading allowed between subareas so long as the total of all subarea budgets does not exceed the region wide total emission budget. SJVUAPCD further indicated that the new SJV SIP will address the maximum amount of emissions that can be traded and the distance over which these emissions are traded, and a requirement that all subareas not included in a trade should have currently valid conformity findings for their Regional Transportation Plan and Transportation Improvement Programs.

3. EPA Response to Public Comments and Final Action

EPA appreciates the complexity of transportation planning in a vast nonattainment area where the responsibility for preparing, adopting, and amending transportation plans and programs is assigned to 8 separate councils of government. The State and local agencies may elect to address the CAA section 176(c) transportation conformity provisions by means of either a region wide budget or separate budgets for subareas. EPA intends to work with all involved parties to ensure that the SIP's budget (or budgets) and conformity provisions provide needed flexibility without jeopardizing the attainment demonstration or the integrity of the regional and local transportation planning processes. In this final action, EPA cautions that subarea budgets must be fully documented and that the budgets and future conformity determinations must be consistent with the region wide attainment demonstration. A significant shift in growth from one subarea to another may therefore require a new modeled attainment demonstration with revised subarea budgets.

G. Nonimplementation Finding

1. EPA's Proposal

The initial proposal included a proposed nonimplementation finding, based on the failure of the SJVUAPCD to meet its SIP commitments to adopt and implement 6 rules to achieve specified emissions reductions totaling 8.09 tpd of VOC emissions. Because the proposed nonimplementation finding is based on a failure of the SJVUAPCD to adopt and implement regulations, the finding would apply to western Kern County (which is under the jurisdiction of the SJVUAPCD) but not to East Kern County, which is under the jurisdiction of the Kern County Air Pollution Control District. 65 FR 37930, footnote 12. 65 FR 37929–31. The rules and associated emission reductions are listed in Table 1 below. EPA proposed that the rules should be adopted and implemented as expeditiously as practicable but implementation should be no later than November 15, 2002, the first rate of progress milestone under the severe area provisions of the CAA. EPA proposed that the 2 to 1 offset sanction in CAA section 179(b)(2) would apply if SJVUAPCD failed to adopt the 6 measures within 18 months of the effective date of the final finding. EPA further proposed that the highway approval and funding sanction would apply under CAA section 179(b)(1) if SJVUAPCD did not correct the deficiencies within 6 months after the offset sanction is imposed.

2. Public Comments

CRPE commented that an implementation deadline of November 15, 2002, is too late and this delay will unnecessarily threaten the health of San Joaquin Valley residents. EPA should require actual implementation of the rules before the end of the 18 month period. EPA should impose the highway sanctions first, in order to motivate the political forces that will have to be harnessed in order to adopt the rules. EPA should also determine that SJVUAPCD has failed to implement the SIP because the District has excluded agricultural operations from its NSR rule.

SJVUAPCD and CARB commented that the District should be allowed the flexibility to correct the nonimplementation by achieving the 8.09 tpd of VOC emissions through any combination of the six control measures in the SIP or newly identified substitute measures. ARB stated that there has been a substantial change in the inventory for several of the rule categories, and SJVUAPCD indicated that the 8.09 tpd of VOC reductions might be achieved by implementing fewer than the six delinquent rules.[4] SJVUAPCD requested the EPA extend the implementation deadline to May 15, 2003, in order to allow source operators time to get controls in place but still achieve the reductions before the beginning of the 2003 ozone season.

3. EPA Response to Comments and Final Action

EPA agrees with CRPE that prompt remedy to the nonimplementation is important, but EPA believes that it may be unreasonable to require the SJVUAPCD and affected sources to implement the delinquent measures more quickly than EPA proposed. EPA

[4] Of the six measures EPA identified, one measure (i.e., Rule 4662—Organic Solvent Degreasing) has been adopted by the District and three measures (i.e., Rule 4601–Architectural Coatings, Rule 4623—Organic Liquid Storage, and Rule 4663—Organic Solvent Waste) are scheduled for adoption by the District in late 2001 or early 2002. The other two measures (i.e., Rule 4692—Commercial Charbroiling and Rule 4411—Oil Production Well Cellars) are not scheduled for adoption by the District at this time.

disagrees with CRPE that the agricultural operations exemption in the SJVUAPCD NSR rule constitutes SIP nonimplementation, since the exemption, although inconsistent with CAA provisions, does not evince a failure to carry out provisions in the approved SIP. Finally, EPA sees no compelling need to reverse the presumptive order of sanction implementation, and therefore the Agency intends to follow the sequence set in 40 CFR 52.31: the offset sanction at the 18th month and the highway sanction at the 24th month following the finding.

EPA believes that the SJVUAPCD is obliged by its existing SIP to meet the specific requirements of its commitments. However, CARB and the District have the opportunity to amend the SIP by showing that reasonable further progress and other requirements of the CAA can be met with a revised schedule of controls and associated emission reductions. This is especially the case where emissions inventory changes after the original control measure commitment show that far less actual emission reductions can be achieved by controls on individual source categories. However, in view of the magnitude of the emission reductions needed for attainment, SJVUAPCD is not free to abandon or postpone any control measure that continues to be available, even though the original SIP's cumulative emission reduction commitment could be met without implementing the measure. EPA therefore finalizes the proposed nonimplementation finding and sets November 15, 2002, as the outside date for adoption and implementation of the delinquent control measures.

III. Summary of the Final Action and the State's SIP Responsibilities.

A. East Kern County

EPA is taking final action to split the SJV ozone nonattainment area into two separate ozone nonattainment areas pursuant to CAA section 107(d)(3)(D). EPA is retaining for the new East Kern County ozone nonattainment area the serious nonattainment area ozone classification but granting two 1-year attainment date extensions pursuant to CAA section 181(a)(5), thus establishing an attainment deadline of November 15, 2001. If East Kern County does not record a violation in 2001, the area will be eligible for redesignation to attainment for the 1-hour ozone NAAQS, following submittal by the State and approval by EPA of a redesignation request and maintenance plan addressing the provisions of CAA section 175A.

B. San Joaquin Valley

Pursuant to CAA section 181(b)(2), EPA is finalizing its finding that the SJV area failed to attain the 1-hour ozone NAAQS by the statutory deadline. By operation of law, the area is reclassified to severe and is therefore required, under CAA section 181(a)(1), to attain the NAAQS as expeditiously as practicable but no later than November 15, 2005. Under CAA section 182(i), the State must submit a SIP addressing the severe area requirements. EPA is establishing May 31, 2002, as the deadline for the submission of the severe area requirements. Under CAA section 182(d), severe area plans must meet all requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 tpy major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) an NSR rule requiring offsets of at least 1.3 to 1; (4) a rate of progress in creditable emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; (5) a fee requirement for major sources should the area fail to attain by 2005; and (6) a demonstration of attainment as expeditiously as practicable but no later than November 15, 2005. The more stringent RACT provisions must be scheduled for implementation as expeditiously as practicable, and EPA strongly encourages an implementation deadline of no later than 18 months after the effective date of the reclassification to severe.

Upon the effective date of EPA's finding of failure to implement the SIP, SJVUAPCD has until November 15, 2002 to adopt and implement the six delinquent measures shown in Table 1.

TABLE 1.—DELINQUENT RULE COMMITMENTS IN THE SAN JOAQUIN VALLEY SIP

Rule No.	Rule title	Emission reductions in tpd VOC
4601	Architectural Coatings	1.51
4662	Organic Solvent Degreasing	2.44
4692	Commercial Charbroiling	0.39
4623	Organic Liquid Storage	3.0
4411	Oil Production Well Cellars	0.56
4663	Organic Solvent Waste	0.19

If SJVUAPCD has not adopted the measures listed in Table 1 with implementation deadlines of on or before November 15, 2002, the 2 to 1 offset sanction in CAA section 179(b)(2) would apply after 18 months of the effective date of the finding. If the deficiencies have still not been corrected six months after the offset sanction is imposed, then the highway approval and funding sanction would apply under CAA section 179(b)(1).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

EPA has determined that neither the finding of failure to attain, nor the finding of nonimplementation, would result in any of the effects identified in Executive Order 12866 sec. 3(f). As discussed above, findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy.

In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse

impact on State, local, or tribal governments or communities. Similarly, the finding of failure to implement the SIP merely ensures the implementation of already existing requirements by creating the potential for the imposition of sanctions if the State does not adopt the rules to which it has committed under its own State plan, and therefore the finding does not adversely affect entities.

The designation of East Kern County as a new, separate nonattainment area with a serious classification and the attainment date extensions will not impose any new requirements on any sectors of the economy because the area is already classified as serious.

For the aforementioned reasons, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) for the following reasons: (1) The finding of failure to attain is a factual determination based on air quality considerations; (2) the resulting reclassification must occur by operation of law and will not impose any federal intergovernmental mandate; (3) the designation of East Kern County as a separate nonattainment area with a serious classification will not impose any new requirements on any sectors of the economy; and (4) the finding of nonimplementation does not impose any new federal mandates but rather obliges the State to adopt rules to which it has committed under its State plan.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, this rule also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

As discussed above, findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. In addition, the finding of failure to implement the SIP merely ensures the implementation of already existing requirements to which the State has committed under its own plan, and therefore the finding does not adversely affect entities. In this context, it would thus be inconsistent with applicable law for EPA, when it makes a finding of failure to attain and finding of failure to implement the SIP, to use voluntary consensus standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 23, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.305 the ''California-ozone'' table is amended as follows:

a. By adding ''East Kern County'' as a designated area immediately before the entry for ''San Joaquin Valley Area''; and

b. By revising the entry for ''San Joaquin Valley Area.''

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
East Kern County				
That portion of Kern County that lies east and south of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East, then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.	12/10/01	Nonattainment	12/10/2001	Serious.[2]
San Joaquin Valley Area:				
Fresno County	11/15/90	Nonattainment	12/10/2001	Severe-15.

CALIFORNIA—OZONE—Continued

[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kern County (part) That portion of Kern County that lies west and north of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.	11/15/90	Nonattainment	12/10/2001	Severe-15.
Kings County	11/15/90	Nonattainment	12/10/2001	Severe-15.
Madera County	11/15/90	Nonattainment	12/10/2001	Severe-15.
Merced County	11/15/90	Nonattainment	12/10/2001	Severe-15.
San Joaquin County	11/15/90	Nonattainment	12/10/2001	Severe-15.
Stanislaus County	11/15/90	Nonattainment	12/10/2001	Severe-15.
Tulare County	11/15/90	Nonattainment	12/10/2001	Severe-15.
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date is extended to November 15, 2001.

[FR Doc. 01–27289 Filed 11–7–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7088–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Deletion of the ICG Iselin Railroad Yard Site from the National Priorities List (NPL).

SUMMARY: EPA Region 4 announces the deletion of the ICG Iselin Railroad Yard Site (site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA is warranted.

DATES: This ''direct final'' action will be effective January 7, 2002, unless EPA receives significant adverse or critical comments by December 10, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562–8806, west.robert@epa.gov. Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303; and the Jackson-Madison County Library, 433 East Lafayette, Jackson, TN 38305, (901) 423–0225.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562–8806 Fax (404) 562–8788, west.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

The U.S. Environmental Protection Agency Region 4 announces the deletion of the ICG Iselin Railroad Yard Site, Jackson, Tennessee, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA has determined that the ICG Iselin Railroad Yard site *does not* pose an imminent and substantial endangerment to the public health and welfare, and the environment. EPA will accept public comments for thirty days after publication of this document in the **Federal Register**.

Section II of this document describes the criteria for deleting sites from the NPL. Section III discusses deletion procedures. Section IV explains the basis for the intended deletion, and discusses the history of the site. Section V states EPA's action to delete the site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL. EPA shall consider, in consultation with the state, whether the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response action required;

(ii) All appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii)The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In the case of the ICG Iselin Railroad Yard Site, Tennessee Department of Environment and Conservation's (TDEC) remedial investigation and subsequent follow up groundwater studies conducted under EPA's supervision, indicted that the site does not pose a significant threat to public health or the environment, and, therefore, active remedial measures are not appropriate. If new information becomes available which indicates a need for future action, EPA may initiate any remedial action necessary. In accordance with the NCP (40 CFR 300.425 (e)(3)), whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the site:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The Tennessee Department of Environment and Conservation has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Direct Final Deletion; and, (4) All relevant documents have been made available for public review in the local site information repository. EPA is requesting only dissenting comments on the proposed action to delete.

For deletion of the release from the site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If no dissenting comments are received, no further activities will be implemented and this ''direct final'' action will become effective. Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in Section II of this document, § 300.425 (e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to delete the ICG Iselin Railroad Yard Site from the NPL.

The ICG Iselin Railroad Yard Site is located in Jackson, Madison County, Tennessee. The Site is an 80-acre property located at the intersection of Eastern Street and Magnolia Street in Jackson. The facility has had several owners over the years, each of whom used it for various purposes related to railroad operation. The Mobile and Ohio Railroad Co. operated the facility as a railroad station and maintenance depot from 1906 until 1940 when Gulf Mobile and Ohio Railroad Company purchased Mobile and Ohio Railroad Co. Gulf Mobile continued to use the facility as a railyard. In 1972, Gulf Mobile reorganized as the Illinois Central Gulf Railroad Company (ICG). ICG used the site as a locomotive maintenance facility from 1972 until 1986, when the Williams Steel Co. purchased much of the property. Norfolk Southern Railway Co. owns the remainder of the property. The site had several contaminated units: a main warehouse; numerous railroad tracks; storage tanks; a battery waste disposal pile; a rail car fueling platform under an open-air shed; and the railyard's pollution control system, which includes a neutralization tank, a concrete tank, several drainage ditches, and a surface impoundment.

The Site was placed on the National Priorities list on December 16, 1994. Upon execution of the Non-Fund Finance Agreement (NFFA) between EPA and TDEC, TDEC oversaw the remediation of the Site. EPA reviewed and commented or concurred on most documents pertaining to the remediation process. Under a State Commissioner's Order, the PRPs conducted a RI/FS which included a Baseline Human Health Risk Assessment. The RI detected arsenic and TCE in groundwater above recommended levels. However, further investigation revealed both contaminants were originating from off-site source(s) upgradient of the Site. TDEC is currently investigating the areas upgradient of the Site. TDEC approved the RI/FS in August 1997.

V. Action

In September 1998, a Non-Time Critical Removal Action Work Plan was submitted to TDEC. The report characterized contaminated on-site soils. A Public Meeting was held on October 8, 1998 to inform the community of the removal action. TDEC issued an Action Memorandum on October 21, 1998 to document State approval of the removal action. The excavated soil was staged, treated and analyzed using the toxicity characteristic leaching procedure (TCLP). The removal action required excavation of approximately 716 tons of lead contaminated soil. The contaminated soil was disposed of in the Jackson-Madison County Landfill.

Finally, all disturbed areas were seeded, fertilized and mulched.

On November 4, 1999, consistent with the NFFA, TDEC's Director of Superfund approved a Record of Decision. Pursant to the NFFA, EPA had issued a concurrence letter in October 1999. The ROD was executed on November 4, 1999. The selected alternative is institutional controls which include deed restrictions and prohibits drilling of water wells on Site. All institutional controls are currently in place. TDEC sent EPA a Certification Letter on November 4, 1999 stating the Site had been remediated to the extent practicable. Furthermore, the letter concludes that the Site appears protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to remedial action and is cost-effective. This remedy utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable, and satisfies the statutory preference for remedies that employ treatment that reduces toxicity, mobility and volume. Finally, it concludes that all construction actives relative to CERCLA are complete.

In March 2000, EPA issued and TDEC concurred on the Final Close Out Report and Final Remedial Action Report. Finally, TDEC will conduct Statutory Five-Year reviews at the Site to ensure the selected remedy remains protective of human health and the environment.

VI. State Concurrence

TDEC in a letter dated June 30, 2001 concurs with EPA that the criteria for deletion of the NPL listing have been met. Therefore, EPA is deleting the ICG Iselin Railroad Yard site from the NPL, effective on January 7, 2002. However, if EPA receives dissenting comments by December 10, 2001. EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: September 10, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 300, title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for the ''ICG Iselin Railroad Yard, Jackson, TN.''

[FR Doc. 01–27831 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2485: MM Docket No. 00–174; RM–9965]

Radio Broadcasting Services; Kailua-Kona, HI

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: At the request of Nick Koster this document alots Channel 244A to Kailua-Kona, Hawaii. *See* 65 FR 59164, published October 4, 2000. The reference coordinates for the Channel 244A allotment at Kailua-Kona, Hawaii, are 19–38–26 and 155–59–44.

DATES: Effective December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–174, adopted October 24, 2001, and released October 26, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kailua-Kona, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–28075 Filed 11–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2484; MM Docket No. 00–87; RM–9870RM–9961; RM–9984, RM–9985, RM–9986, RM–9987]

Radio Broadcasting Services; Brightwood, Madras, Prineville and Bend, Oregon

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Madras Broadcasting, allots Channel 251C1 at Madras, Oregon as the community's first local aural transmission service, substitutes Channel 253C3 for Channel 252C3 at Bend, Oregon, and modifies the license of Station KTWS(FM) to specify the alternate Class C3 channel, and substitutes Channel 255C3 for unoccupied and unapplied-for Channel 254C3 at Prineville, Oregon. It denies the request of Muddy Broadcasting Company proposing the allotment of Channel 251C3 at Brightwood, Oregon, which initiated this proceeding. *See* 65 FR 34997 (June 1, 2000). Channel 251C1 can be allotted at Madras consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at a site 36.6 kilometers (22.7 miles) northeast of the community. The reference coordinates for Channel 251C1 at Madras, Oregon are 44–50–02 NL and 120–45–55 WL. Channel 253C3 is substituted for Channel 252C3 at Bend consistent with the Commission's Rules at Station KTWS(FM)'s licensed site. The coordinates for Channel 252C3 at Bend, Oregon are 44–04–41 NL and 121–19–57 WL. Channel 255C3 is substituted for Channel 254C3 at Prineville at the vacant allotment site. The coordinates for Channel 255C3 at Prineville, Oregon are 44–13–30 NL and 120–46–30 WL. A filing window for Channel 251C1 at Madras will not be opened at this time. Instead, the issue of opening a filing window for the channel will be

addressed by the Commission in a subsequent Order.

DATES: Effective December 10, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–87, adopted October 17, 2001, and released October 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon is amended by adding Madras, Channel 251C1; removing Channel 252C3 and adding Channel 253C3 at Bend, and removing Channel 254C3 and adding Channel 255C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–28073 Filed 11–7–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket No. 2001–69]

RIN 1550–AB52

Authority for Certain Savings and Loan Holding Companies To Engage in Financial Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to revise its regulations to clarify what financial activities are authorized for certain savings and loan holding companies (SLHCs) after the Gramm-Leach-Bliley Act (GLBA). Additionally, this proposed rule explains how the conditions the Federal Reserve Board (FRB) imposes on financial holding companies (FHCs) would apply to those SLHCs, outlines the process OTS would use to review activities that are complementary to financial activities, and removes certain obsolete and redundant provisions.

DATES: Comments must be received by December 10, 2001.

ADDRESSES:

Mail: Send comments to Regulations Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 2001–69.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Docket No. 2001–69.

Facsimile: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Docket No. 2001–69.

E-mail: Send e-mail to *regs.comments@ots.treas.gov,* Attention: Docket No. 2001–69, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect, to assist us in serving you.) We schedule appointments on business days between 10 a.m. until 4 p.m. In most cases, appointments will be available the next business day following the date we receive your request.

FOR FURTHER INFORMATION CONTACT: Donna M. Deale, (202) 906–7488, Manager, Holding Company and Affiliate Policy, Office of Supervision Policy; Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel for Business Transactions, Business Transactions Division, Office of Chief Counsel; and Sally Warner Watts, (202) 906–7380, Senior Counsel, Regulations and Legislation Division, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you want to access any of these telephone numbers by text telephone (TTY), you may call the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Authorizing New Activities as Financial in Nature

A. Statutory Background

Historically, most SLHCs [1] were permitted to engage in a wide range of activities. Before the enactment of GLBA,[2] a unitary SLHC whose subsidiary thrift was a qualified thrift lender generally could operate without activity restrictions. Additionally, a multiple SLHC that acquired all, or all but one, of its subsidiary thrifts as a result of supervisory acquisitions generally could operate without activity restrictions if all of the subsidiary thrifts were qualified thrift lenders. These SLHCs have been referred to as ''exempt.'' *See* 12 CFR 584.2a. Most all SLHCs qualified as exempt.

Under section 10 of the Home Owners' Loan Act (HOLA),[3] all other SLHCs (''nonexempt'' SLHCs) were permitted to engage only in those nonbanking activities that were: specified by HOLA; [4] approved by regulation as closely related to banking by FRB; [5] or authorized by regulation on March 5, 1987 for SLHCs to engage in directly.[6]

GLBA expanded the activities authorized for nonexempt SLHCs to include those authorized for FHCs under section 4(k) of the Bank Holding Company Act of 1956 (BHCA).[7] GLBA also curtailed the availability of exempt status to only those that meet all of the following criteria: [8]

- It was an SLHC on May 4, 1999, or becomes an SLHC under an application pending with OTS on or before that date;
- The SLHC meets and continues to meet the requirements for an exempt SLHC; and
- The SLHC continues to control at least one savings association (or successor savings association) that it controlled on May 4, 1999, or that it acquired under an application pending with OTS on or before that date.

As a result, GLBA in effect redefined the requirements for an exempt SLHC. As discussed later, this proposal would modify the regulation's definition of an exempt SLHC.

This rule would affect the SLHCs that do not qualify as exempt. These nonexempt SLHCs currently make up less than 15 percent of all SLHCs, so most SLHCs would not be affected by this proposed rule. However, the universe of nonexempt SLHCs will increase as new SLHCs are approved.

This rule recognizes the authority (under section 10(c)(9) of HOLA) for nonexempt SLHCs to engage in the activities that are permissible for FHCs under section 4(k) of BHCA, as well as activities already permitted for nonexempt SLHCs (under section 10(c)(2) of HOLA).

[1] An SLHC generally is any company that directly or indirectly controls a savings association, or that controls any other company that is a savings and loan holding company. *See* 12 CFR 583.20 and 12 U.S.C. 1467a(a)(1)(D).

[2] Pub. L. 106–102, 113 Stat. 1338 (1999).

[3] 12 U.S.C. 1467a.

[4] 12 U.S.C. 1467a(c)(2)(A)–(E) & (G).

[5] *See* 12 CFR 225.86(a), which is applicable to SLHCs under 12 U.S.C. 1467a(c)(2)(F)(i).

[6] 12 CFR 584.2–1, which implements 12 U.S.C. 1467a(c)(2)(F)(ii).

[7] 12 U.S.C. 1843(k).

[8] *See* 12 U.S.C. 1467a(c)(9)(C).

B. Approved Activities for Financial Holding Companies

Section 4(k) of BHCA authorizes enumerated activities that are financial in nature. In addition, the statute authorizes FHCs to engage in other activities that FRB and the Department of the Treasury determine to be financial in nature or incidental to a financial activity. The statute also authorizes FHCs to engage in activities that FRB determines to be complementary to a financial activity and not a substantial safety or soundness risk. Activities permissible for FHCs under section 4(k) are generally broader than the activities permitted for BHCs, which must be ''closely related to banking.''

FRB has issued regulations governing nonbanking activities that are approved for FHCs under section 4(k) of BHCA. For an activity that is not specifically listed in the statute as financial in nature, these regulations specify processes for FHCs to obtain a determination that the activity is authorized as financial in nature, including an activity incidental to a financial activity, or an activity complementary to a financial activity. FRB regulations also impose conditions on the conduct of certain activities. The following chart lists the activities authorized for FHCs under section 4(k) of BHCA and the conditions, if any, that FRB imposes.

Type of activity authorized by BHCA	FRB interpretations and conditions on activity
Activities that are financial in nature or incidental to a financial activity. Sec. 4(k)(1)(A).	In addition to the activities that are financial in nature as specified in section 4(k)(4), which are discussed below, FRB has approved the following activity as financial in nature or incidental to a financial activity:
	Acting as finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate. This activity is subject to various limitations and disclosure requirements. (For example, a finder must distinguish products and services offered by the FHC from those offered by a third party through the finder service). 12 CFR 225.86(d) (65 FR 80740 and 66 FR 19081).
	FRB has proposed the following activity as financial in nature or incidental to a financial activity:
	Real estate brokerage and real estate management. (66 FR 307 and 66 FR 12440).
Activities that are complementary to a financial activity and that do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. Sec. 4(k)(1)(B).	The FRB rule specifies factors it will consider in approving a notice to engage in a complementary activity. 12 CFR 225.89 (66 FR 418–419).
	FRB has proposed to identify the following activities as complementary to a financial activity:
	Data processing activities such as data storage, general data processing, and electronic information portal services. (65 FR 418)
Lending, exchanging, transferring, investing for others, or safeguarding money or securities. Sec. 4(k)(4)(A).	The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).
Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death, or providing and issuing annuities, and acting as a principal, agent, or broker for the foregoing. Sec. 4(k)(4)(B).	The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).
Providing financial, investment, or economic advisory services. Sec. 4(k)(4)(C).	The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).
Issuing or selling instruments representing pools of assets permissible for a bank to control directly. Sec. 4(k)(4)(D).	The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).
Underwriting, dealing in, or making a market in securities. Sec. 4(k)(4)(E).	The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).
	In addition, an FRB rule states that a bank or thrift or U.S. branch or agency of a foreign bank may make an intra-day extension of credit to a securities affiliate that is engaged in these activities, only at market rates. A foreign bank that is an FHC or is treated as an FHC must comply with sections 23A and 23B of the FRA when a U.S. branch or agency of the foreign bank and such a securities affiliate engage in certain transactions. 12 CFR 225.4(g).
Any activities that FRB determined was closely related to banking on or before November 12, 1999, Sec. 4(k)(4)(F).	Activities that FRB authorized by regulation by November 12, 1999, are listed at 12 CFR 225.28,[9] referenced by 12 CFR 225.86(a)(1) (66 FR 418).
	Activities that FRB approved by order by November 12, 1999, are listed at 12 CFR 225.86(a)(2) (66 FR 418). These activities include: providing administrative services to mutual funds, owning shares of a securities exchange, acting as a certification authority for digital signatures, providing employment histories to third parties, providing check cashing and wire transmission services, providing notary public services and other specified services in connection with offering banking services, and abstracting real estate titles.
Any activity that FRB determined to be usual in connection with the transaction of banking or other financial operations abroad by November 12, 1999. Sec. 4(k)(4)(C).	Activities that FRB authorized by regulation by November 12, 1999, are listed at 12 CFR 211.5(d) These activities are subject to the terms and conditions in part 211, and FRB interpretations in effect on that date. 12 CFR 225.86(a)(1) (66 FR 418). These activities also include, subject to various conditions, providing management consulting, operating a travel agency, and sponsoring a mutual fund. 12 CFR 225.86(b) (66 FR 418).

Type of activity authorized by BHCA	FRB interpretations and conditions on activity
Merchant banking investment activities conducted by certain types of securities affiliates. Sec. 4(k)(4)(H).	Authorized merchant banking activities are described in FRB and Treasury rules at 12 CFR part 225, subpart J, and part 1500 (66 FR 8466–8493). These rules describe permissible investments, the conditions imposed on investments, limitations on managing or operating a portfolio company, holding periods for merchant banking investments, provisions addressing investments in private equity funds, and risk management and recordkeeping policies. *See also* 12 CFR 225.86(c) (66 FR 418).
Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;.	The FRB and Treasury interim rules list the activities from the statute and the factors they will consider in approving requests for specific activities. 12 CFR 225.86(e)(1) and 1501.2(a) (66 FR 260–261).
Providing any device or other instrumentality for transferring money or other financial assets;.	
Arranging, effecting, or facilitating financial transactions for account of third parties. Sec. 4(k)(5).	

C. This Rule—Approved Activities for Nonexempt SLHCs

This rule would revise OTS regulations to reflect the authority under GLBA for nonexempt SLHCs to engage in financial activities that are permissible for FHCs. OTS is proposing a number of amendments to current part 584. Specifically, the rule would revise the heading of the part to more accurately reflect its content, redesignate all existing sections as a new subpart A, revise these provisions as described below, and add a new subpart B.

1. Amendments to Subpart A

Permitted Activities (§ 584.2)

Current § 584.2 lists the activities expressly permitted by statute for nonexempt SLHCs. This proposed rule would revise § 584.2 to explicitly recognize the authority of SLHCs to engage in activities permissible for FHCs as financial in nature, incidental to a financial activity, or complementary to a financial activity. (In this preamble, these three types of activities are referenced as ''financial activities''). This proposed rule is consistent with a 2001 OTS opinion that states that nonexempt savings and loan holding companies may engage in the activities permissible for financial holding companies under section 4(k) of BHCA.[10]

Exempt SLHCs (§ 584.2a)

This proposed rule would revise § 584.2a, which describes the qualifications for ''exempt'' SLHCs, to incorporate the qualifying conditions contained in section 10(c)(9) of HOLA. In addition, the rule would remove obsolete regulatory text from this section. Paragraphs (a)(2), (b), (c), and (d) are unnecessary, because they have very limited applicability and merely repeat the statute.

2. New Subpart B

Purpose (§ 584.100)

New subpart B would specify the procedures, conditions, and restrictions that apply to nonexempt SLHCs engaging in financial activities permissible for FHCs. This subpart would not apply to exempt SLHCs.

FHC Activities Approved for Nonexempt SLHCs (§ 584.110)

This section would state that a nonexempt SLHC may engage in financial activities that FRB permits for FHCs, as implemented by FRB by order or regulation.[11] The proposed rule also would provide that OTS may prescribe limitations on these activities in a policy directive, supervisory directive, order, or regulation. OTS might exercise this authority, for example, if it had significant supervisory concerns about a particular holding company's conduct of the activity and the potential impact on its subsidiary savings association, or if some aspect of the activity raised significant concerns for the thrift industry in general.

Applicability of FRB Conditions and Terminology (§ 584.120)

Generally, the rule would provide that a nonexempt SLHC must comply with the conditions imposed by FRB on an FHC that conducts that activity.[12] FRB permits an FHC to choose to conduct an activity under any applicable authority of section 4 of BHCA. An FHC's conduct of the activity is subject only to the procedures and limitations imposed under the chosen source of authority.[13] Under this proposed rule, a nonexempt SLHC would similarly be permitted to choose the source of authority under which it will act and would be required to comply with all procedures and limitations imposed on the activity under the chosen source of authority. *See* proposed § 584.2(d).[14]

For example, a nonexempt SLHC that engages in underwriting, dealing in, or making a market in certain government securities could invoke either section 4(c)(8) or section 4(k)(4)(E) of BHCA as its statutory authority. If the SLHC invoked section 4(c)(8) of BHCA, the SLHC generally would be subject to revenue and other restrictions applicable to the bank holding companies[15] and would be required to file a notice under § 584.2–2. Those restrictions would not apply if the SLHC chose to act under section 4(k)(4)(E) of BHCA to conduct the identical activity, nor does section 4(k)(E) impose any other restrictions.

Most activities authorized under existing §§ 584–2–1 and 584.2–2 are also authorized under section 4(k) of BHCA. OTS expects that most SLHCs will elect to conduct the activities under section 4(k) of BHCA because these activities will be subject to fewer procedural requirements.

[9] FRB has proposed to revise this regulation listing previously authorized data processing activities to cover more extensive activities, similar to the coverage afforded under § 225.86(d)(1), and to increase the percentage of a company's revenues that may be derived from data processing. (65 FR 80387–80388).

[10] *See* Op. Chief Counsel, April 11, 2001, available on OTS's web site, www.ots.treas.gov.

[11] *See* 12 CFR 225.86. The FRB regulations on permissible activities for FHCs generally are found at 12 CFR part 225, subpart I. Many of the other sections of part 225—such as those dealing with how to qualify as a financial holding company, the consequences of failing to continue to meet requirements for financial holding company status, or the notice regarding new activities—are not applicable to SLHCs.

[12] The rule would provide guidance on how SLHCs would comply with the FRB's regulations on merchant banking that limit the aggregate value of certain merchant banking investments to a percentage of the financial holding company's Tier 1 capital. The rule states that Tier 1 capital means the SLHC's GAAP consolidated capital less GAAP consolidated intangible assets.

[13] 66 FR 406 (Jan. 3, 2001).

[14] These procedures may, for example, include the notice procedures at 12 CFR 584.2–1(c) (activities permissible as of March 5, 1987) or the application procedures under 12 CFR 584.2–2 (permissible bank holding company activities).

[15] 12 CFR 225.28(b)(8).

This proposed rule would prohibit a nonexempt SLHC from engaging in permissible activities in a way that would deviate from FRB conditions, unless it obtains prior written approval from OTS. Permitting SLHCs to deviate from FRB conditions in limited cases is consistent with OTS's position that the conditions imposed on an activity by FRB under section 4(c)(8) of BHCA do not necessarily apply to SLHCs.[16] An SLHC seeking approval for a deviation from FRB conditions would have to provide sufficient information for OTS to determine that: (1) Any deviation is not material; (2) FRB conditions should not apply to SLHCs generally; or (3) there is good cause not to apply the conditions. We request comment on the procedure for an SLHC to obtain OTS approval of a deviation from FRB conditions and the standards that OTS should apply to review requests for approval.[17]

SLHC Notice Requirements (§ 584.130)

Generally, FRB requires an FHC to notify it only after the FHC commences an activity under section 4(k) of BHCA for the first time. That notice is required by statute.[18] There is no similar statutory notice requirement for SLHCs. OTS believes that it generally can obtain sufficient information regarding SLHC activities through existing reports and through the examination process. These reports already provide for notice of new activities in a timely fashion.[19] OTS sees no need to impose an additional type of subsequent notice for the nonexempt SLHCs affected by this rule. Accordingly, this rule would not generally require an SLHC to notify OTS when it engages in a permissible activity.

In accordance with section 4(j) of BHCA,[20] an FHC is required to notify FRB before the FHC commences activities that are complementary to a financial activity. FRB reviews these notices based on the facts of each case, regardless of whether FRB has approved a similar activity for another FHC. FRB considers the following:

- Whether the activity is complementary to an identified financial activity;
- Whether the proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally; and
- Whether the proposal could be expected to produce benefits to the public that outweigh possible adverse effects.[21]

Because section 4(j) requires a case-by-case approach in authorizing complementary activities, OTS proposes to require a nonexempt SLHC to notify OTS before commencing an activity that is complementary to a financial activity. OTS would process these notices under the standard treatment procedures in part 516, subparts A and E. The rule would require an SLHC to submit the same information as that required by FRB.[22] This would enable OTS to review the proposed activity for consistency with FRB approved complementary activities and for supervisory concerns. If OTS determined that the proposed activity is not an FRB-approved complementary activity, it would have the information necessary to assist the SLHC in obtaining FRB approval of the activity.

D. Procedural Matters

OTS plans to publish a final rule expeditiously. Accordingly, OTS has prescribed a 30-day comment period.

Section 722 of GLBA requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. 12 U.S.C. 4809. New subpart B uses plain language. We invite comment on whether there are additional changes OTS can make so that the provisions added are easier to understand.

II. Findings and Certifications

A. Paperwork Reduction Act

OTS invites comment on:

(1) Whether the collections of information contained in this proposed rule are necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(2) Whether the estimate of the burden of the proposed information collection is accurate;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor and respondents are not required to respond to collections of information unless they display a currently valid Office of Management and Budget (OMB) control number.

The information collections requirements contained in this proposed rule have been submitted to OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). OTS will use any comments received to develop new burden estimates. Send comments on these information collections, referring to OTS Docket No. 2001– , OMB No. 1550–0063, to OTS and OMB at these addresses: by mail to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, or by e-mail to *infocollection.comments@ots.treas.gov*; by mail to Alexander Hunt, Attention: 1550–0063, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington DC 20503, or by e-mail to *ahunt@omb.eop.gov*.

OTS needs the information required under § 584.120 to decide whether to grant a request from an SLHC for approval to deviate from FRB conditions. OTS needs information required under § 584.130 to make a determination whether an SLHC's proposed complementary activities are consistent with FRB approvals of complementary activities. The likely respondents are savings and loan holding companies that are not exempt SLHCs under § 584.2a that want to engage in financial activities authorized under section 4(k) of HOLA. There are existing information collections associated with §§ 584.2–1, 584.2–2,

[16] *See* Op. Chief Counsel, March 14, 1990 (in considering an SLHC's application to engage in underwriting of government obligations and municipal revenue bonds and commercial paper, OTS would not be bound by the FRB's conditions but would likely consider the FRB's underlying concerns); Op. Chief Counsel, December 3, 1990 (in considering an SLHC's application to engage in asset allocation services, OTS determined that the FRB's concerns could be met without FRB conditions).

[17] In addition to FRB conditions, a nonexempt multiple SLHC must comply with statutory restrictions on ownership of voting shares in a company engaged in activities other than the activities specified in section 10(c)(2) of HOLA. Specifically, section 10(e)(1)(A)(iii) of HOLA provides that a multiple SLHC may not acquire more than 5 percent of the voting stock of a company, other than a subsidiary, that engages in activities other than those listed in 12 U.S.C. 1467a(c)(2). 12 U.S.C. 1467a(e)(1)(A)(iii). *See* 12 CFR 584.4. OTS concludes that this restriction applies to activities described under section 4(k) of BHCA if the activities are not also described in section 10(c)(2) of HOLA.

[18] 12 U.S.C. 1843(k)(6) and 66 FR 418–19 (Jan. 3, 2001) (to be codified at 12 CFR 225.87).

[19] Under authority of 12 CFR 584.1(e), each SLHC files an Annual/Current Report (H–(b)(11)) within 45 days after the end of each quarter to identify any changes, including new business activities, that have occurred since filing of its annual report at the close of its fiscal year.

[20] 12 U.S.C. 1843(j).

[21] *See* 12 CFR 225.89.

[22] *Id.*

and 584.9. Since this rule increases the number of nonexempt SLHCs, OTS is increasing the burden estimate slightly for the existing collections. OTS estimates the total burden for the five sections as 97 hours, as described below:

Rule section	Subject	Number of respondents	Number of responses per respondent	Average annual burden hours per response	Annual disclosure and recordkeeping burden
584.2–1, 584.2–2	Filings for pre-1987 approved and bank holding co. activities.	10	1	2	20
584.9	Application for approval of convicted person's participation.	1	1	2	2
584.120	Applicability of conditions	10	1	5	50
584.130	Notice of complementary activity	5	1	5	25

B. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA), the Director of OTS has certified that this proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA. 5 U.S.C. 603.

In overseeing SLHCs that engage in activities that are permitted for FHCs under section 4(k) of BHCA, OTS proposes to impose only minimal notice and approval requirements. These requirements assure that if a nonexempt SLHC of any size chooses to engage in newly authorized activities, it would comply with statutory requirements. These requirements apply only when an SLHC plans to engage in complementary activities or plans to deviate from conditions FRB imposes on a particular section 4(k) activity. These procedural requirements are minor, are comparable to FRB requirements applicable to financial holding companies, and should not be burdensome for small SLHCs.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMA) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. 2 U.S.C. 1532. OTS has determined that this proposed rule would not have such an impact. Rather, the rule would clarify that nonexempt SLHCs have broader authority to engage in nonbanking activities than are specified under current regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons stated in the preamble, the Office of Thrift Supervision proposes to amend 12 CFR part 584 as follows:

PART 584—SAVINGS AND LOAN HOLDING COMPANIES

1. Revise the heading of part 584 to read as shown above.

2. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

3. Add a heading for subpart A before § 584.1 to read as follows:

Subpart A—General

4. In § 584.2, revise the heading of the section, redesignate paragraph (c) as paragraph (e), and add new paragraphs (c) and (d) to read as follows:

§ 584.2 Activities.

* * * * *

(c) *Financial holding company activities.* In addition to the activities permitted under paragraph (b) of this section, a savings and loan holding company may engage in activities that are permissible for financial holding companies as financial in nature, incidental to a financial activity, or complementary to a financial activity. Subpart B of this part describes the procedures, conditions, and restrictions that apply to these activities.

(d) *Election.* If a savings and loan holding company may conduct an activity under more than one authority described in this part, it must comply only with the procedures and limitations imposed under the authority it elects to use.

* * * * *

5. Revise § 584.2a to read as follows:

§ 584.2a Exempt savings and loan holding companies.

(a) *General requirements.* A savings and loan holding company is exempt from the activity limitations at § 584.2(b) of this part if it satisfies all of the following requirements:

(1) It was a savings and loan holding company on May 4, 1999, or became a savings and loan holding company after that date under an application pending with OTS on or before that date;

(2) It meets and continues to meet the following requirements:

(i) The savings and loan holding company (or its subsidiary) controls only one savings association and that savings association is a qualified thrift lender; or

(ii) The savings and loan holding company (or its subsidiary) controls more than one savings association; all (or all but one) of the savings associations were acquired in an acquisition under section 13(c) or 13(k) of the FDIA or section 408(m) of the National Housing Act, as in effect immediately before August 9, 1989; and all of the savings associations are qualified thrift lenders; and

(3) It continues to control at least one savings association (or a successor) that it controlled on May 4, 1999 or acquired under an application pending with OTS on or before that date.

(b) *Failure to satisfy QTL requirements.* Any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalified as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, must register as and be deemed to be a bank holding company within one year after the date on which the savings association fails to qualify as a qualified thrift lender. In

such a case, the company is subject to the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

6. Add a new subpart B after § 584.9 to read as follows:

Subpart B—Activities That are Financial in Nature

Sec.

§ 584.100 What does this subpart do?

This subpart addresses how savings and loan holding companies (SLHCs) (''you'') may engage in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 (BHCA) (12 U.S.C. 1843(k)). SLHCs that are exempt under § 584.2a are not subject to this subpart.

§ 584.110 May I engage in activities permissible for financial holding companies?

You may engage in activities that are permissible for financial holding companies as financial in nature, incidental to a financial activity, or complementary to a financial activity. The Federal Reserve Board (FRB) specifies these activities in regulations and orders. *See* 12 CFR 225.86. Collectively, this subpart refers to these activities as ''permissible activities.'' OTS may limit permissible activities by policy directive, supervisory directive, order, or regulation.

§ 584.120 Is my ability to engage in permissible activities subject to any conditions or restrictions?

(a) *General.* If you engage in a permissible activity, you must comply with the conditions that FRB imposes by regulation or order on a financial holding company's exercise of the activity, except as provided in paragraph (c) of this section.

(b) *FRB terminology.* In applying capital limitations in FRB regulations and orders, the term ''Tier 1 capital of the financial holding company'' means your GAAP consolidated capital less your GAAP consolidated intangible assets.

(c) *Deviation from FRB conditions.* You must not engage in a permissible activity in a way that would deviate from FRB conditions unless you obtain prior written approval from OTS. To obtain such approval, you must submit information to OTS under the standard treatment processing procedures of subparts A and E of part 516 of this chapter. This information must be sufficient to demonstrate that:

(1) Any deviation from FRB conditions is not material;

(2) The conditions do not apply to SLHCs generally; or

(3) There is good cause not to apply the conditions in your case.

§ 584.130 Must I notify OTS when I engage in permissible activities?

(a) *Type of activity requiring notice.* You are not required to notify OTS (except as specified in § 584.120(c)) when you engage in a permissible activity other than an activity that is complementary to a financial activity.

(b) *When notice is required.* You must notify OTS in writing before you commence an activity, either directly or indirectly, that is complementary to a financial activity. You must file this notice under the standard treatment procedures of subparts A and E of part 516 of this chapter.

(c) *Contents of notice.* Your notice must:

(1) Identify and define the proposed complementary activity, specifically describing what the activity would involve and how you would conduct the activity;

(2) Describe the FRB approval of a complementary activity under which this activity would be permissible;

(3) Identify the financial activity that the proposed activity would complement, and provide detailed information sufficient to support a finding that the proposed activity is complementary to the identified financial activity;

(4) Describe the scope and relative size of the proposed activity, as measured by the percentage of the projected revenues that you will derive from the activity and the size of assets associated with the activity;

(5) Discuss the risks that the activity may pose to the safety and soundness of your subsidiary savings associations and to the financial system generally;

(6) Describe the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that the activity could raise, and explain the measures you propose to take to address those potential effects;

(7) Describe the potential benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that you expect the proposal to produce; and

(8) Provide any information about your financial and managerial resources and any other information that OTS requests.

(d) *Factors OTS will consider.* (1) Whether the proposed activity is consistent with an activity that FRB has approved as complementary; and

(2) Whether there are supervisory reasons not to permit you to engage in the proposed activity.

Dated: October 31, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–27889 Filed 11–7–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C28 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28 series engines. This proposal would require removal of third stage turbine wheels, part number (P/N) 6899383, with certain serial numbers (SN's), from service before exceeding new, reduced life limits. This proposal would also establish a drawdown program to require the removal of those turbine wheels that exceed the new lower limit. This proposal is prompted by five reports of uncommanded shutdown caused by third stage turbine blade tip fractures, and turbine shroud fractures. The actions specified by the proposed AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds.

DATES: Comments must be received by January 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No.2001–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–31–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of five uncommanded shutdowns on Rolls-Royce Corporation 250–C28 series engines, caused by third stage turbine blade tip and turbine shroud fractures. The manufacturer's analysis indicates that this condition is caused by certain third stage turbine wheels, part number (P/N) 6899383, that have a critical dimension outside the manufacturing limit. There are believed to be 84 third stage turbine wheels with this condition. For these 84 turbine wheels, the manufacturer has reduced the life limits of 4,550 hours time-since-new (TSN) and 6,000 cycles-since-new (CSN), to life limits of 1,500 hours TSN and 3,000 CSN. This condition, if not corrected, could result in an uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce Corporation 250–C28 series engines of the same type design, the proposed AD would require removal from service certain SN's of third stage turbine wheels before exceeding new, reduced life limits.

Economic Analysis

There are approximately 84 engines of the affected design in the worldwide fleet. The FAA estimates that 42 engines installed on helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 44 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of a new third stage turbine wheel is approximately $4,371. Although the FAA estimates that approximately $2,929 per wheel has been lost due to life reduction, the manufacturer has stated it may reduce the new wheel cost to the customer. Based on these figures, the total cost effect of the proposed AD on U.S. operators is estimated to be $294,462.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce Corporation: Docket No. 2001–NE–31–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the following Table 1:

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS

HX91428R	HX91489R	HX91707R
HX91456R	HX91490R	HX91708R
HX91457R	HX91492R	HX91709R
HX91458R	HX91493R	HX91710R
HX91459R	HX91494R	HX91711R
HX91461R	HX91500R	HX91712R
HX91462R	HX91501R	HX91713R
HX91464R	HX91503R	HX91714R
HX914659	HX91504R	HX91715R
HX91465R	HX91506R	HX91721R
HX91466R	HX91507R	HX91722R
HX91467R	HX91508R	HX91726R
HX91468R	HX91510R	HX91733R
HX91469R	HX91511R	HX91735R
HX91471R	HX91512R	HX91736R
HX91472R	HX91513R	HX91738R
HX91473R	HX91519R	HX91742R
HX91474R	HX91520R	HX91744R
HX91475R	HX91522R	HX91748R
HX91477R	HX91523R	HX91749R
HX91478R	HX91524R	HX91750R
HX91480R	HX91525R	HX91754R
HX91482R	HX91526R	HX91764R
HX91483R	HX91527R	HX91765R
HX91485R	HX91528R	HX91766R
HX91486R	HX91529R	HX91767R
HX91487R	HX91530R	HX91768R
HX91488R	HX91706R	HX91769R

These engines are installed on, but not limited to Bell Helicopter Textron 206L–1 helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent an uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds, do the following:

(a) Remove from service the third stage turbine wheels, P/N 6899383, listed by SN in Table 1 of this AD, in accordance with the following Table 2:

TABLE 2.—REMOVAL SCHEDULE

For third stage by turbine wheels on the effective date of this AD	Remove by
(1) With fewer than 3,000 cycles-since-new (CSN), and fewer than 1,500 hours time-since-new (TSN).	3,000 CSN or 1,500 hours TSN, whichever occurs earlier.
(2) With between 3,000 and 6,000 CSN, and fewer than 1,500 hours TSN.	200 additional cycles, after the effective date of this AD.
(3) With fewer than 3,000 CSN, and between 1,500 and 3,000 hours TSN.	100 additional hours, after the effective date of this AD.
(4) With between 3,000 and 6,000 CSN and between 1,500 and 3,000 hours TSN.	200 additionally cycles or 100 additional hours, after the effective date of this AD, whichever occurs earlier.
(5) With more than 6,000 CSN, or more than 3,000 hours TSN	Before further flight.

(b) After the effective date of this AD, do not install any third stage turbine wheels listed by SN in Table 1 of this AD. Thereafter, except as provided in paragraph (c) of this AD, no alternative cyclic life limits may be approved for the turbine wheels listed inTable 1 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 1, 2001.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–28025 Filed 11–7–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[WI107–01–7337b; FRL–7064–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the minor source/minor modification pre-construction permitting requirements for Wisconsin Electric Power Company's (WE's) Pleasant Prairie Power Plant. The Pleasant Prairie Power Plant is located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted the revised requirements on February 9, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility. This SIP revision will not have an adverse effect on air quality.

DATES: EPA must receive written comments on this proposed rule by December 10, 2001.

ADDRESSES: You should mail written comments to: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0396.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

Table of Contents

I. What Action Is EPA Taking Today?

We are proposing to approve revisions to pre-construction permitting requirements for WE's Pleasant Prairie Power Plant. The Pleasant Prairie Power Plant is located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. WDNR submitted the revised requirements on February 9, 2001, as amendments to its SIP. The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 10, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–27830 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7098–2]

Proposed Revision to That Portion of the Approved Texas Underground Injection Control (UIC) Program Administered by the Texas Natural Resource Conservation Commission (TNRCC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA received an application to revise portions of Texas' approved UIC program for Class I, III, IV, and V injection wells. After careful review of the application, EPA determined the revisions to TNRCC's UIC program warrant approval. Further, the relevant UIC regulation at 40 CFR 145.32(b)(2) requires that whenever EPA determines the proposed program revision is substantial, EPA shall publish its decision in the **Federal Register** and in enough large newspapers to achieve statewide coverage to allow the opportunity for the public to comment for at least 30 days. By this notification, EPA advises the public of the nature of the proposed action, time-frame during which public comment will be taken, and the address where comments should be sent. The regulation provides an opportunity for the public to request a hearing. Such a hearing shall be held if there is significant public interest based on requests received. As such, this action advises the public of the hearing request process and opportunity to request a hearing.

The application to revise portions of the State's approved UIC program, and public comments received in response to this document, will provide EPA with the essential information necessary to approve, disapprove, or approve in part, the proposed revisions submitted under Section 1422 of the Safe Drinking Water Act (SDWA). This action is being taken to ensure that the proposed revisions of the Texas UIC program which are the Texas statutes and regulations governing underground injection are accurately incorporated by reference into the Code of Federal Regulations.

DATES: EPA will accept public comments and requests for hearing on the proposed revisions to the approved TNRCC UIC program from November 8, 2001 until the close of the business day of December 10, 2001.

ADDRESSES: Written public comments should be sent to the Environmental Protection Agency, Ground Water/UIC Section (6WQ–SG), 1445 Ross Avenue, Dallas, Texas, 75202, or electronically to *leissner.ray@epa.gov*. Please include your name, address, and optionally, your affiliation with any public or private organization. Paper copies of the revision application, related correspondence, and documents are available for examination and duplication (for a nominal fee) between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the EPA offices in Dallas.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ray Leissner, Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, (214) 665–7183.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of the SDWA allows states to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program which meets

the requirements of regulations in effect under Section 1421 of the SDWA, and will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator by rule to approve, disapprove, or approve in part, the State UIC program.

EPA's approval of primacy for to the State of Texas for underground injection into Class I, III, IV, and V wells was published on January 6, 1982 (47 FR 618), and became effective February 7, 1982. Elements of the State's approved primacy application, submitted through the Texas Department of Water Resources, a predecessor to the Texas Natural Resource Conservation Commission (TNRCC), were published in Title 40 of the Code of Federal Regulations, at 40 CFR 147.2200.

Section 1422 of the SDWA and regulations at 40 CFR 145.32 allow for revision of approved State UIC programs when State statutory or regulatory authority is modified or supplemented. In accordance with those requirements, TNRCC submitted an application to EPA for revision of the UIC program governing Class I, III, IV, and V injection wells.

II. Actions Related to This Rulemaking

A. Petition

On June 17, 1996, Mr. Richard Lowerre of the law firm of Henry, Lowerre, Johnson, Hess and Fredrick, acting on behalf of his clients, the Environmental Defense Fund (EDF) and later the Oil and Chemical Association of Workers (OCAW), filed a petition for partial withdrawal of program approval for the Texas UIC program. The petition informed EPA of EDF's intent to sue under Sections 1422 and 1449 of the SDWA and EPA rules at 40 CFR Part 135, subpart B. The petition alleged that, due to changes made by the Texas Legislature to environmental statutes and TNRCC's interpretation of those changes, TNRCC's UIC program no longer met the conditions for primacy for the UIC program. The petition identified specific elements of TNRCC's UIC program that formed the basis for EDF's request to EPA to withdraw approval of TNRCC's UIC program. These included: Inadequate enforcement authority due to recently passed audit privilege and takings laws, inadequate public participation in enforcement activities, inadequate public participation in permitting decisions, and inadequate opportunities for judicial review of permit decisions made by TNRCC. Over the course of the resolution of the petition, additional issues were raised by the Petitioners but not included within the petition. These issues, as well as issues raised by EPA, were satisfactorily addressed through subsequent negotiations.

Many issues raised over the course of the negotiations were applicable to other federal programs authorized to Texas for implementation, such as the National Pollutant Discharge Elimination System (NPDES) and the Resource Conservation and Recovery Act (RCRA). The effort to resolve issues spanning several programs resulted in the exchange of several letters, memos, and other documentation addressing other programs in addition to UIC. Note however, this notice only addresses the resolutions reached to satisfy the EDF/OCAW petition and federal UIC program requirements under the SDWA.

B. EDF/OCAW Petition Issues

Enforcement Authority and Audit Privilege Law

The petition alleged that TNRCC did not possess adequate enforcement authority due to recently passed laws regarding audit privilege and takings and the interpretations of those laws by TNRCC. In 1995 the Texas legislature passed House Bill 2473, the Texas Audit Privilege Law. The petition claimed this law established broad immunity from prosecution from environmental laws and restricted the public's right to know and right to bring enforcement actions.

On February 11, 1997, EPA representatives met with the Governor of Texas to discuss the impact of recent legislation on the UIC program. Discussions led to an agreement that TNRCC would seek amendments to the audit law needed to meet specific requirements for enforcement authority and public availability of information associated with authorized federal programs administered by the State. This agreement was briefly discussed in an April 23, 1997, letter from the EPA Office of Enforcement and Compliance Assurance (OECA) to Mr. Lowerre. This letter also outlined four general points providing the context of EPA's approach to State audit immunity and privilege laws and explained how the proposed amendments, if implemented properly, met federal requirements to retain enforcement authority on all delegated and authorized federal programs. Further, the letter concluded that the proposed amendments restored information gathering authority, provided public availability equal to that afforded under the federal program, and addressed additional concerns of the petitioner including: Protection of whistle blowers, immunity from repeat violations, and reduction of the scope of immunity from penalties based upon economic benefit. On September 1, 1997, Texas House Bill (HB) 3459 took effect and amended, as agreed to by EPA and TNRCC, the Texas Environmental, Health, and Safety Audit Privilege Act. A copy of HB 3459 was submitted as part of the UIC revision supplement submitted by Texas in March 1999.

Enforcement Authority and the Takings Law

The Texas legislature passed Senate Bill 14, the Takings Law in 1995. A ''taking'' is defined under the Private Real Property Rights Preservation Act as a governmental action that affects an owner's private real property that is the subject of the government's action, in whole or in part, temporarily or permanently, in a manner that restricts or limits the owner's right to the property. The Takings Law established a new right for compensation where certain government authorized action reduced the value of real property by 25%. The petition alleged that the legislature did not appropriate funds for compensation requests and this lack of funding had a chilling effect on the State's ability to act responsibly on permit and enforcement actions. The petition alleged the Takings Law increased the State's burden of proof in enforcement actions beyond that required in the federal UIC program. 40 CFR 145.13(b)(2) requires an authorized State program's burden of proof under State law be no greater than that established for the federal program under the SDWA.

40 CFR Part 145, subpart B, lists the provisions and requirements State programs authorized under section 1422 of the SDWA must administer within their UIC program. These rules, promulgated in 1983, do not address or consider the effect of takings laws as they would apply to UIC program activities. The takings issue was resolved in the manner described below.

The Petitioners proposed that TNRCC include in the UIC program revision Memorandum of Agreement (MOA) with EPA, additional annual reporting on any effect the Takings Law may have imposed on the State's UIC program. TNRCC found the additional reporting suggested by Petitioners was not required under the federal regulations for UIC authorization. EPA agreed. However, under the March 23, 1999 MOA, TNRCC agreed to keep EPA informed of any proposed changes to laws, regulations, guidelines, judicial

decisions, or administrative actions that might affect the State UIC program. As such, TNRCC agreed to document and compile any action demonstrating impacts to the UIC program from implementation of the Takings Law. This documentation will be made available to the general public and EPA in Central Records in TNRCC's main offices in Austin, Texas on April 1 of each year for the next four years.

Public Participation in Enforcement and Permitting Activities

Enforcement Activities

The petition contended that public participation in enforcement activities was inadequate based on a 1995 letter from the EPA Regional Counsel to the Texas Attorney General's (AG) office responding to an application for primacy for the Texas NPDES program that had similar participation requirements. The EPA letter identified as inadequate the State's agreement not to oppose the permissive intervention by a citizen in an enforcement action. EPA opined that, under Texas rules, the scope of interests necessary for a citizen to intervene in a contested case in Texas appeared narrower than those allowed for under federal law.

In addition, the petition contended that TNRCC lacked the necessary statutory or regulatory requirements to establish appropriate procedures or practice to notify affected citizens of enforcement proceedings. The petition claimed that publishing notice within the Texas Register was insufficient.

Permitting Activities

The petition raised several issues with public participation in UIC permitting activities. Primarily, the petition argued TNRCC's public participation process for permitted activities was more restrictive than federal requirements, affording only ''affected persons'' with standing to participate through an adjudicatory hearing process. The federal public participation requirements for UIC permits, found at 40 CFR Part 124, allow for a more informal open meeting and comment process. The petition asserted the State adjudicatory hearing process was too restrictive. The passage of Senate Bill 1546 narrowed the conditions for standing, thus limiting participation to ''affected persons''. Other issues included problems with the content of the public notices, publication of the notice before a draft permit was complete, a lack of response to public comments, and a slow review process on claims of confidentiality precluding timely citizen inquiry.

Resolution

In June 1997, EPA Region 6, EPA Headquarters (HQ), and TNRCC reached tentative agreements to resolve these public participation issues. These agreements are discussed in letters from TNRCC to Region 6 dated June 6, 1997, and in response by EPA to TNRCC on June 19, 1997.

TNRCC proposed: (1) To draft rules that would amend Title 30 of the Texas Administrative Code (TAC), Chapter 55, subchapter B, to implement changes wherein written responses to public comment on permitting decisions would be considered and responded to by the person or body making the permitting decision; (2) to provide for notice and comment on administrative enforcement cases for the UIC program; (3) to provide that the rules at 30 TAC Chapter 39 concerning comments, public meetings and notices of public meetings were sufficient to meet EPA's concerns; (4) to draft rules that expanded citizens' opportunity for permissive intervention in UIC penalty actions; and (5) to draft rules with less restrictive conditions for determining a person's status as an affected person (standing), and to eliminate the need to seek a contested case hearing to obtain a judicial review of the permitting decision.

EPA accepted the above proposal subject to the following: (1) That the State Supreme Court never articulate a more restrictive test for standing than that allowed under federal statutes; (2) that TNRCC had the statutory authority to implement these agreements and fully institute the notice and comment process proposed; and (3) that there be timely adoption of regulations necessary to implement the agreements. These agreements resolved concerns regarding the need for: (1) Written responses to comments on permitting actions; (2) public notice and opportunity to comment on proposed settlements of administrative enforcement actions; (3) notice of right to request a public hearing (meeting) on UIC permit applications; (4) permissive intervention in administrative enforcement actions; and (5) standing to participate as a commenter in permitting actions and in subsequent judicial proceedings.

The proposed revisions to implement the regulatory changes called for in the agreement were published in the August 8, 1997, edition of the Texas Register. The regulatory actions included adoption of rule changes in 30 TAC, Chapter 55, subchapter B, section 52.25, repeal of 30 TAC, section 305.106 to avoid duplication of the new rules, and adoption of new rules at 30 TAC, Chapter 80, subchapters C and F, sections 80.105–80.257. These changes were published in the Texas Register on November 21, 1997, effective December 1, 1997.

Response to Comments and More Open Public Meetings

The new rules in 30 TAC, Chapter 55, subchapter B, section 55.25(b) provided the specific provisions agreed to in EPA's letter of June 19, 1997. The amendment to 30 TAC, section 55.25(b), provides procedures for content and timing of Commission responses, and authorizes the Executive Director to call and conduct public meetings and provides requirements governing those meetings. These public meetings, open to all, provide an opportunity for public input into proposed UIC permits equivalent to the public meetings requested and held under 40 CFR Part 124.

Expanded Consideration of Comments

Under federal regulations found at 40 CFR 124.12(c), any person may submit oral or written statements or data concerning a draft permit and 40 CFR 124.17 requires a response to all significant public comments at the time of final permit action. This level of participation is much less formal or restrictive than that reserved for a formal hearing process. The amendment at 30 TAC, Chapters 55 and 80, addressed concerns in the petition that public comments could not be considered within the context of contested case hearings. To ensure comments received during the public comment period are duly considered when a contested case hearing is held, all comments recieved and any subsequent response by TNRCC are entered into the evidentiary hearing record, and may be considered by the Commission in its decision. In addition, parties to the hearing are allowed to enter any comments or responses received in the public meeting into the evidentiary hearing record (30 TAC, section 80.127).

Intervention in Enforcement Actions

TNRCC finalized amendments to 30 TAC Chapter 80, as proposed in the Texas Register August 8, 1997. These amendments provided a process to ensure that all federally delegated and approved programs, including the UIC program, meet federal requirements preserving the rights of citizens to intervene in enforcement actions. 40 CFR 145.13(d) outlines the requirements for an approved State UIC program to involve the public in its enforcement proceedings. In part, under 40 CFR 145.13(d), a State may either provide

authority to allow any citizen having an interest in the action (i.e., standing) to intervene, or provide assurance that the agency will investigate and provide written responses to all citizen complaints provided to the agency through procedures set by the agency for collecting such information. The Petitioners alleged the State's narrower view on standing prohibited more citizens from achieving intervener status in comparison to the federal UIC program. An amendment to 30 TAC, section 80.105, provides that a preliminary hearing is required for an enforcement action under any federally authorized program. A citizen's right to intervene in a proposed enforcement action was broadened under 30 TAC, section 80.109, which expanded the scope of potential parties to contested cases. The term ''party'' to enforcement actions was expanded to include any party granted permissive intervention by the administrative law judge (ALJ). Further, the ALJ will not oppose intervention by parties having a justiciable interest where intervention would not present a risk of delay or prejudice to the original parties. These amendments to 30 TAC, section 80 implemented the regulatory changes required by EPA's agreement dated June 19, 1997.

Opportunities for Judicial Review of Permit Decisions

The petition asserted that the State UIC program must allow for judicial review of permit decisions. Further, the petition alleged that the State UIC program must allow for a measure of judicial review of permit decisions equivalent to that afforded persons appealing a permit decision by a federal UIC program. 40 CFR 124.19 allows any person who filed comments on the draft permit or participated in a public hearing on the matter, to seek review of the permit decision by the Environmental Appeals Board. Thereafter, parties can seek judicial review under section 1448 of the SDWA. The petition contends, because of the narrower interpretation of standing by the State, fewer citizens could seek judicial review of a TNRCC UIC permit decision than could under a federal UIC program.

The Petition alleged that the opportunity for a citizen to appeal for judicial review of a TNRCC UIC permit decision was inadequate. Section 1448(a)(2) of the SDWA provides that a petition for judicial review of any action taken by the Administrator under the Act (other than actions pertaining to establishment of MCLs or MCLGs) may be filed within the circuit in which the petitioner resides or transacts business. The relevant federal UIC regulation referencing judicial review is at 40 CFR 124.19(e). Overall, 40 CFR Part 124 identifies conditions for judicial review and various scenarios wherein final agency action occurs on a permit decision.

TNRCC affords the right to seek judicial review of any permit decision at section 5.351 of the Texas Water Code. In addition, the general public's ability to seek judicial review of a permit decision was enhanced and broadened through the rule amendments at 30 TAC, section 55. These amendments expand the TNRCC's response to public comments and provide a greater opportunity for public comments through public meetings and/or preliminary hearings and comments considered at a contested case hearing. Further, 30 TAC, section 55.25(b)(3) provides the procedural prerequisites enabling a commenter to preserve and exercise the right to seek judicial review.

Changes to the Texas UIC Program

The petition alleged that numerous statutory and regulatory changes to the UIC program occurred since the program was approved in 1982, and TNRCC did not provide appropriate notice to EPA of these changes, or afford EPA the opportunity to comment on the changes. Under 40 CFR 145.32(a), an approved State UIC program is required to ''keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities''.

On August 14, 1998, TNRCC submitted one original and two certified copies of its UIC revision package. To review the revision package, EPA set up a review team comprised of personnel specialized in UIC program activites, enforcement activities, and legal requirements. Additional copies were created and distributed to the review team to determine completeness. The initial package contained a summary, a program description, Attorney General's (AG) Statement, Memorandum of Agreement (MOA), a listing of all applicable regulations and State Statutes, and numerous other appendices, including forms, shell permits, shell notices, and guidance documents utilized to implement the program.

Over the course of review, EPA received comments on the submission from the Petitioners, including numerous additional issues consisting of past and present program and legislative activities. These issues were also included in EPA's review. In a February 14, 1999 letter, EPA provided TNRCC with its first formal response to the submission. It contained the EPA review team's findings resulting from a comparison of the submission to required elements for approvable UIC programs found at 40 CFR Part 145. The letter summarized the review team's findings and included requests for revisions and/or clarifications to several elements, including the MOA, AG Statement, and Program Description, as well as a clarification to the TNRCC/Railroad Commission of Texas Memorandum of Understanding (MOU).

On March 23, 1999, TNRCC submitted its initial revision supplement in response to EPA's comments. Ongoing negotiations with the Petitioners and additional review by EPA resulted in a second set of comments sent to TNRCC on July 22, 1999. On November 30, 1999, TNRCC provided a second supplement to the revision submission as a combined response to the ongoing negotiations and EPA's findings. The second supplement included updates and/or corrections to TNRCC's organizational charts and program staffing, a revised Program Description, a Quality Management Plan, an aquifer exemption listing, new public notification requirements under HB801, and clarifications to TNRCC's penalty assessment policy.

Settlement Agreement

In some cases, issues raised by the Petitioners extended into details of UIC program implementation. For those issues, a negotiated agreement was reached. This settlement agreement, signed between the Petitioners and EPA in August and September 2000 respectively, is part of the administrative docket available for review at EPA Region 6. In exchange for additional reporting by TNRCC and oversight by EPA, the Petitioners withdrew their petition for withdrawal of program authorization and agreed not to contest this program revision. EPA believes that there are no unresolved issues raised during the submission and review process that warrant disapproval of this program revision application.

III. Related Action With the Railroad Commission of Texas

In 1982, under the authority of section 1422 of the SDWA, the U.S. EPA Administrator approved Texas' UIC program governing Class I, III, IV and V injection wells except those wells located on Indian lands. This approval conveyed primary enforcement responsibility, ''primacy,'' to the State. That portion of the program administered by the Texas Department

of Water Resources (TDWR), predecessor to the TNRCC, included Class III brine mining wells.

However, in 1985, the Texas legislature transferred the regulation of Class III brine mining wells from the TDWR to the Railroad Commission of Texas (RRC). The transfer of authority over Class III brine mining wells is not reflected in the existing description of the Texas UIC program within 40 CFR part 147, subpart SS. The TNRCC UIC program revision submitted for final approval, along with a RRC UIC program revision submitted in May 1999 (which is also proposed for approval elsewhere in today's **Federal Register**), accurately reflects that transfer of authority within the State's UIC program approved under section 1422.

IV. Revision Package Program Elements

All elements of the TNRCC's comprehensive program revision application are contained within a set of three-ring binders that include the initial submission in August 1998 (3 volume set), a supplement submitted in March of 1999 (1 volume set), and by a second supplement (1 volume set) submitted in November of 1999. Below is a table of contents developed to assist the reader in identifying each element within the application and all relevant amendments that together, comprise the final version of the application EPA proposes to approve.

August 14, 1998 revision application	March 23, 1999 revision supplement	November 30, 1999 revision supplement
Volume I of III	Volume I of I	Volume I of I
Cover Letter/Table of Contents	Cover Letter/Table of Contents/EPA Review Summary.	Cover Letter/Table of Contents/EPA Review Summary/October 1, 1999 letter from Jim Phillips, TNRCC to Larry Starfield, EPA Region 6 on proposed understanding between EPA, EDF, and TNRCC.
Summary		
Program Description	Revised Program Description	Revised Program Description.
Memorandum of (MOA)	Revised MOA.	
Attorney General's Statement		
Appendix 1 Chronology		
Appendix 2 Organization	Revised Appendix 2	Revised Appendix 2.
Appendix 3 Staffing	Revised Appendix 3	Revised Appendix 3.
Appendix 4 Checklist		
Appendix 5 Aquifers		
Appendix 6 Inventory	Revised Appendix 6.	
Appendix 7 Rules		
Volume II of III		
Appendix 8 Legislative Updates/State Statues		
Volume III of III		
Appendix 9 Forms	Revised Appendix 9.	
Appendix 10 Permits	Revised Appendix 10.	
Appendix 11 Notices	Revised Appendix 11.	
Appendix 12 Guidance	Revised Appendix 12.	
	Appendix 13 Memorandum of Understanding between TNRCC and RRC.	
	Appendix 14 TNRCC Quality Assurance Program Plan.	
	Appendix 15 TNRCC Penalty Policy.	
	Appendix 16 Aquifer Exemptions for Projects prior to 1982.	
	Appendix 17 Aquifer Exemptions approved since 1982.	Revised Appendix 17.
	Appendix 18 Supporting Documents for AG Statement.	
	Appendix 19 Response to TNRCC/MOU Concerns.	
	Appendix 20 Administrative Records Management.	
	Appendix 21 Public Participation—Production Area Authorizations (PAAs).	
		Appendix 22 TNRCC Quality Management Plan.
		Appendix 23 Additional Information on Public Participation.
		Appendix 24 TNRCC Confidentiality Policy.
		Appendix 25 UIC Permits/PAAs.

The original revision and supplements, consisting of five (3 ring) binders, have been kept in original condition as submitted by the TNRCC for those who may wish to view all documentation as submitted.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant

regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045: Children's Health Protection.

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because UIC programs afford protection by isolating wastes underground, reducing the risk of exposure to all age groups equally. Therefore, EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to injected wastes.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since limited information collection or record-keeping would be involved. The proposed rule would merely update the incorporation by reference material for which any information collection or record-keeping requirements have already been approved by OMB.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore Federal approval of these revisions, would not result in additional regulatory burden to or directly impact small businesses in Texas. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator, through her duly delegated representative, the Regional Administrator, certifies that this rule, if approved, will not have a significant economic impact on small entities in Texas.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. This rule, if finalized, will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore this action will not effect the existing relationship between the national government and the State, or the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898: Environmental Justice

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), EPA has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Today's proposal provides equal public health protection to communities irrespective of their socioeconomic condition and demographic make-up.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The UIC program for Indian Lands is separate from the State of Texas UIC program proposed for revision here. The UIC program for Indian lands in Texas is administered by EPA and can be found at 40 CFR 147.2205 under the Code of Federal Regulations. Thus, Executive Order 13175 does not apply to this proposed rule.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Action Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Reporting and recordkeeping requirements, Water supply.

Dated: October 23, 2001.

Gregg Cooke,

Regional Administrator, Region 6.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart SS—Texas

2. Section 147.2200 is revised to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published on January 6, 1982 and effective February 7, 1982. A revision, by application of the Texas Natural Resource Conservation Commission (TNRCC), to the program was approved pursuant to the requirements at § 145.32 on [signature date of final rule]. That portion of the State of Texas underground injection control program, approved under section 1422 of the SDWA, and administered by the TNRCC, consists of the following elements:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph (a) are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register on [date of FR Director's approval].

(1) Title 30 of the Texas Administrative Code sections 281.5, 281.11, 281.21, Chapter(s) 305, 331, and 335 subchapters A and C.

(2) Vernon's Texas Codes Annotated, Water Code, Chapter 27 (The Injection Well Act).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered UIC program.

(1) Title 30 of the Texas Administrative Code Chapters 39, 50, 55, 80, and 281.

(2) Vernon's Texas Codes Annotated, Water Code, Chapters 5, 7, 26, and 32, Health and Safety Code section 361, Government Code (ORA) Chapter 552 and Government Code (APA) Chapter 2001.

(c) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the Texas Natural Resource Conservation Commission, revised March 23, 1999, and signed by the EPA Regional Administrator on October 23, 2001.

(d) *Statement of legal authority.* ''State of Texas Office of Attorney General Statement for Class I, III, IV, and V Underground Injections Wells' signed by the Attorney General of Texas, June 30, 1998.

(e) *Program Description.* The Program Description and all final elements of the revised application.

(f) *Other Wells.* Certain Class V and Class III wells are regulated under the UIC program of the Railroad Commission of Texas approved on April 23, 1982 and revised [date of Administrator's approval of the RRC's Class III Brine mining program]. This authority is cited in 147.2201.

[FR Doc. 01–27835 Filed 11–7–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7098–3]

Proposed Revision to That Portion of the Approved Texas Underground Injection Control (UIC) Program Administered by the Railroad Commission of Texas (RRC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA received an application to revise portions of Texas' approved Underground Injection Control (UIC) program for Class III brine mining injection wells. After careful review of the application, EPA determined the revision to the RRC UIC program warrants approval. Further, the relevant UIC regulation at 40 CFR 145.32(b)(2) requires that whenever EPA determines the proposed program revision is substantial, EPA shall publish its decision in the **Federal Register** and in enough large newspapers to achieve statewide coverage to allow the opportunity for the public to comment for at least 30 days. By this notification, EPA advises the public of the nature of the proposed action, time-frame during which public comment will be taken, and the address where comments should be forwarded. The regulation provides an opportunity for the public to request a hearing. Such a hearing shall be held if there is significant public interest based on requests received. As such, this action advises the public of the hearing request process and opportunity to request a hearing.

The application to revise portions of the State's UIC program, and public comments received in response to this document will provide EPA with the essential information necessary to approve, disapprove, or approve in part, the proposed revision submitted under Section 1422 of the Safe Drinking Water Act (SDWA). This action is being taken to ensure that the proposed revisions of the Texas UIC program which describe the statutes and regulations governing underground injection are incorporated by reference into the Code of Federal Regulations.

DATES: EPA will accept public comments and requests for hearing on the proposed revision to the approved RRC UIC program from November 8, 2001 until the close of the business day of December 10, 2001.

ADDRESSES: Written public comments should be sent to the Environmental Protection Agency, Ground Water/UIC Section (6WQ–SG), 1445 Ross Avenue, Dallas, Texas, 75202, or electronically to *leissner.ray@epa.gov.* Please include your name, address, and optionally, your affiliation with any public or private organization. Paper copies of the revision application, related correspondence, and documents are available for examination and duplication (for a nominal fee) between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday at the EPA offices in Dallas.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ray Leissner, Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, (214)665–7183.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of the SDWA allows states to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program which meets the requirements of regulations in effect under Section 300h of the SDWA, and will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator to, by rule, approve, disapprove, or approve in part, the State UIC program.

EPA's approval for primacy for the State of Texas for underground injection into Class I, III, IV, and V wells was published on January 6, 1982 (47 FR 618), and became effective February 7, 1982. Elements of the State's primacy application, submitted through the Texas Department of Water Resources (TDWR), a predecessor to the Texas Natural Resource Conservation Commission (TNRCC), were approved and published in Title 40 of the Code of Federal Regulations, 40 CFR 147.2200. Since that time, authority has been passed through to succeeding agencies. The TDWR became the Texas Water Commission (TWC) which was reorganized in 1993 into the TNRCC, the agency currently charged with administering the UIC program for Class I, III, IV, and V wells.

In addition to the TDWR receiving approval to administer the UIC program for Class I, III, IV and V injection wells, the RRC received approval to administer the UIC program for energy related injection activities in the State, effective May 23, 1982. These wells include Class II injection wells related to oil and gas exploration and production, and Class V geothermal wells. In 1985 the 69th Texas Legislature enacted legislation that transferred jurisdiction over Class III brine mining wells from the TNRCC's immediate predecessor, the TWC, to the RRC.

Section 1422 of the SDWA and regulations at 40 CFR 145.32 allow for revision of approved State UIC programs when State statutory or regulatory authority is modified or supplemented. In accordance with those requirements, the RRC submitted an application to EPA for approval of that portion of the RRC's UIC program governing Class III brine mining wells. Other Class III injection wells remain regulated by the TNRCC.

II. Actions Related to This Rulemaking

The RRC revision application for Class III brine mining injection wells was submitted for approval in its final form in May 1999. Prior to that submission, the RRC submitted key elements of a draft revision application to Region 6 for evaluation. EPA utilized the same review team used to evaluate the TNRCC's UIC program revision application also proposed for approval elsewhere in this volume. The team, consisting of EPA staff from the Region and EPA Headquarters, reviewed the draft application and found nine issues of concern. In April of 1997 EPA and

RRC representatives met to seek resolution of these issues. The issues that were raised during the evaluation period and their resolutions are discussed below.

(A) Protection Standard

To be approved under Section 1422 a State must, among other things, show that it will implement an underground injection control program which meets the requirements of the federal regulations in effect under SDWA Section 1421. Specifically, all State programs approved under Section 1422 must meet the requirements of 40 CFR Part 145 and must have legal authority to implement each of the provisions identified in Section 145.11. States need not implement provisions identical to the provisions listed in Section 145.11, but they must implement provisions that are at least as stringent.

Underground sources of drinking water (USDW) are protected under the UIC program and are defined in 40 CFR 144.3. That definition includes a clearly defined threshold of 10,000 milligrams per litre (mg/l) total dissolved solids (TDS). Aquifers containing water which supplies a public water supply (PWS) or contains a sufficient quantity to supply a PWS with a TDS content less than 10,000 mg/l are USDWs and are protected from endangerment by the SDWA and EPA regulations.

The RRC uses the term ''fresh water'' as an equivalent regulatory protection standard in their UIC program. The RRC's definition of the term ''fresh water'' does not include a specific water quality threshold standard expressed in terms of TDS. Concern was raised by EPA over the potential to interpret the definition of ''fresh water'' to exclude USDWs. This primary issue formed the basis for other concerns, raised by EPA including fluid migration and plugging and abandonment standards.

The RRC asserts that its definition of fresh water is broader in scope than EPA's definition of USDW and includes USDWs. Accordingly, the RRC provided a supplement to the Attorney General's Statement, signed June 2, 1998, stating the term ''fresh water'' as defined by the TNRCC subsumes the SDWA term ''underground sources of drinking water'' as defined by EPA. EPA requested additional written assurance on the matter and received a letter from Steven J. Seni, Ph.D., Deputy Director for Underground Hydrocarbon Storage and Brine Mining, dated October 28, 1998, sufficient to conclude the RRC's definition of fresh water includes USDWs as defined by the TNRCC at Title 30 of the Texas Administrative Code Section 331.2. TNRCC's definition includes a clearly defined threshold of 10,000 TDS, as found in the federal definition for USDWs at 40 CFR 144.3.

(B) Fluid Migration

Section 144.12 (a) states no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The RRC's equivalent rule, Rule 81, prohibits injected fluid from migrating out of the injection zone. Both the State and Federal UIC programs have well construction standards that require casing and cement placement related to the presence of water-bearing aquifers that are protected under the regulations. Uncertainty was expressed by EPA that the RRC regulations on well casing construction were designed on the basis of preventing fluid migration into fresh water. At that time, given the existing disjunct in associating the terms ''fresh water'' and USDW, it was unclear to EPA that there existed a regulatory prohibition against fluid migration along the outside of the casing into a USDW. In response, the RRC provided further explanation of Commission rules regarding construction and mechanical testing requirements. This, coupled with the actions taken to relate the term ''fresh water'' to USDWs, were deemed by EPA to be sufficient to address this issue.

(C) Plugging and Abandonment

Federal plugging requirements for Class III wells are addressed at 40 CFR 146.10. Section 146.10 requires the placement of plugs within a well in such a manner as to allow no movement of fluid into or between USDWs. The RRC has similar regulatory standards designed to protect fresh water. EPA's concerns over proper plugging and abandonment were addressed with the resolution to the fresh water/USDW issue described earlier, and additional language within the June 2, 1998 Supplement to the Attorney General's Statement, verifying the RRC's authority to require a cement plug across the base of the deepest USDW.

(D) Permit Application Requirements

The EPA review revealed that the RRC forms used to collect data from applicants for consideration by the program Director for purposes of evaluating an application for a Class III brine mining well permit were inadequate. To resolve this issue, the RRC amended its current permit application form (H–2) to include all appropriate data elements.

(E) Monitoring, Compliance Tracking and Enforcement Activities

EPA's review concluded that the program description provided in the draft application was insufficient to conclude the RRC maintained an appropriate system for monitoring injected fluid characteristics, tracking compliance and initiating enforcement. To address all three concerns, the RRC submitted supplements to the original program description sufficient for EPA to conclude compliance and enforcement activities were appropriate. The RRC also agreed to place a condition within each Class III brine well permit to meet the federal requirements for injected fluid analysis.

(F) Public Participation

EPA's review raised concerns on RRC's opportunity for public hearings and eligibility for participation in these hearings. The RRC clarified these issues in the final program description. The RRC also added a provision to the Attorney General's Statement clarifying that the Commission cannot take a position on standing that is inconsistent with State law. EPA finds these clarifications sufficient to meet federal standards.

(G) References to State Law

The EPA review team found references to State law within the draft application that appeared to be out of date due to reorganization of the State's statutes. The RRC submitted the formal application containing current references.

III. Revision Package Program Elements

All elements of the RRC's Class III brine mining injection well program revision application are contained within a three-ring binder that combines elements of the original submission in April 1992 updated to the final submission May 25, 1999. Major elements include: The Program Description, the original February 19, 1992 Attorney General's Statement and Supplement dated June 2, 1998, the Memorandum of Agreement between EPA Region 6 and appendices which include copies of organizational charts, State Forms, and applicable rules and regulations.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because UIC programs afford protection by isolating wastes underground, reducing the risk of exposure equally to all age groups. Therefore, this action does not present a disproportionate risk to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to injected wastes.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply to this proposed rule since limited information collection or record-keeping would be involved. The proposed rule would merely update the incorporation by reference material for which any information collection or record-keeping requirements have already been approved by OMB.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. However, under Section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2201, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore Federal approval of these revisions, would not result in additional regulatory burden to or directly impact small businesses in Texas. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator, through her duly delegated representative, the Regional Administrator, certifies that this rule, if approved, will not have a significant economic impact on small entities in Texas.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. This rule, if finalized, will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore this action will not effect the existing relationship between the national government and the State, or the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective

or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pubic Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898: Environmental Justice

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), EPA has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Today's proposal provides equal public health protection to communities irrespective of their socioeconomic condition and demographic make-up.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The UIC program for Indian Lands is separate from the State of Texas UIC program proposed for revision here. The UIC program for Indian lands in Texas is administered by EPA and can be found at Section 147.2205 under the Code of Federal Regulations. Thus, Executive Order 13175 does not apply to this proposed rule.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Action Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Reporting and recordkeeping requirements, Water supply.

Dated: October 23, 2001.

Gregg Cooke,

Regional Administrator, Region 6.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart SS—Texas

2. Section 147.2200 is amended by adding a new paragraph (g) to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

* * * * *

(g) *Requirements for Class III brine mining wells.* The UIC program for Class III brine mining wells in the State of Texas, except for those wells on Indian lands, is the State program administered by the Railroad Commission of Texas (RRC) approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published on [date of publication of final rule] and effective [effective date of final rule]. A revision, by application of the RRC, to the program was approved pursuant to the requirements at § 145.32 on [signature date of final rule]. That portion of the State of Texas underground injection control program, approved under Section 1422 of the SDWA, and administered by the RRC, consists of the following elements:

(1) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph (g) are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register on [date of FR Director's approval].

(i) Vernon's Texas Codes Annotated, Water Code, Chapter 27 (The Injection Well Act), and Chapter 26 Section 26.131.

(ii) Vernon's Texas Codes Annotated, Natural Resources Code, Chapter 91 Sections 002, 101, 103, 104, 142, 143, and 1012.

(iii) Title 16 of the Texas Administrative Code Part 1 Chapter 3 Sections 3.77. Rule 81. Brine Mining Injection Wells, 3.1. Rule 1. Organization Report; Retention of Records; Notice requirement, 3.5. Rule 5. Application to Drill, Deepen, Reenter, or Plug Back, 3.13 Rule 13. Casing, Cementing, Drilling, and Completion Requirements, and 3.14 Rule 14.

Plugging (Amended effective September 14, 1998).

(2) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (g) (1) of this section, are also part of the approved State-administered UIC program.

(i) Vernon's Texas Codes Annotated, Natural Resources Code, Chapters 91, 2001, and 331. (ii) Vernon's Texas Codes Annotated, Government Code Title 10 Chapters 2001, 552, and 311.

(iii) General Rules of Practice and Procedure before the Railroad Commission of Texas.

(3) *Memorandum of Agreement.* The Memorandum of Agreement for Class III brine mining wells between EPA Region VI and the Railroad Commission of Texas signed by the EPA Regional Administrator on October 23, 2001.

(4) *Statement of legal authority.* State of Texas Office of Attorney General's Statement for Class III brine mining injection wells signed by the Attorney General of Texas, February 2, 1992 and the ''Supplement to Attorney Generals's Statement of February 19, 1992'' signed June 2, 1998.

(5) *Program Description.* The Program Description and all final elements of the revised application as approved [date of publication of final rule].

[FR Doc. 01–27836 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7088–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the ICG Iselin Railroad Yard Site from the National Priorities List (NPL).

SUMMARY: The United States Environmental Protection Agency (US EPA) announces its intent to delete the ICG Iselin Railroad Yard Site (site) from the NPL, located in Jackson, Tennessee and requests public comment on this action. The NPL constitutes appendix B to part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA is warranted.

We are publishing this rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, no further activity is contemplated. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by December 10, 2001.

ADDRESSES: Comments may be mailed to Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; and and the Jackson-Madison County Library, 433 East Lafayette Jackson, TN 38305, (901) 423–0225.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–8806, Fax (404) 562–8788, west.robert@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321 (c) (2); 42 U.S.C. 9601–9657;; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: September 10, 2001

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–27832 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2489, MM Docket No. 01–308, RM–10308]

Radio Broadcasting Services; Wickett, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 224A at Wickett, Texas, as that community's first local FM service. The coordinates for Channel 224A at Wickett are 31–30–18 and 103–00–54. There is a site restriction 7.3 kilometers (4.6 miles) south of the community. Since Wickett is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Wickett.

DATES: Comments must be filed on or before December 17, 2001, and reply comments on or before January 2, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–308, adopted October 17, 2001 and released October 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Wickett, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–28074 Filed 11–7–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG75

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for two varieties of purple amole: *Chlorogalum purpureum* var. *purpureum* (purple amole) and *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole). Approximately 8,898 hectares (21,980 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Monterey and San Luis Obispo counties, California. If this proposal is made final, Federal agencies must ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, would not be affected by this rulemaking action.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until January 7, 2002. Public hearing requests must be received by December 24, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may also send comments by electronic mail (e-mail) to *fw1chlorogalum@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Heidi E. D. Crowell, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The genus *Chlorogalum* is a member of Liliaceae (lily family). *Chlorogalum purpureum* is endemic to clay soils that occur in the south coast ranges of Monterey and San Luis Obispo counties. *Chlorogalum purpureum* var. *purpureum* (purple amole) occurs in the Santa Lucia Range of southern Monterey County on lands managed by the U.S. Army Reserve (Army Reserve) at Fort Hunter Liggett, and in northern San Luis Obispo County on lands managed by the California Army National Guard (CANG) at Camp Roberts. *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole) occurs in one region of the La Panza Range of San Luis Obispo County on both private lands, and public lands managed by the U.S. Forest Service on the Los Padres National Forest (LPNF) and California Department of Transportation (Caltrans). The two varieties of *Chlorogalum* were listed as threatened species on March 20, 2000 (65 FR 14878).

Chlorogalum purpureum is a low-growing lily that forms a rosette at the base of the plant (basal rosette) that is made up of linear and flat, bright green leaves. It is the only member of the genus *Chlorogalum* with bluish-purple flowers that open during daytime hours. In contrast, *C. pomeridianum* (common soap plant) has white flowers that open in the twilight or at night (Wilken 2000, Jernstedt 1993). *Chlorogalum purpureum* produces a rosette of typically 4 to 7 basal leaves that are 2 to 5 millimeters (mm) (0.1 to 0.2 inch (in)) wide with wavy margins. The bulb is between 2.5 and 3 centimeters (cm) (0.98 to 1.2 in) and is found in the upper few inches of soil. The inflorescence (flower-cluster of a plant or arrangement of the flowers on the flowering stalk) produces bluish-purple flowers in a raceme (single stem with multiple branches). Each flower has six ovules (structure that develops into a seed if fertilized), six tepals (petals and sepals that appear similar), and six stamens (pollen producing male organs) with bright yellow anthers (pollen sacs). Most fruits that have been examined, both in the field and under cultivation, produce between three and six seeds (D. Wilken, Santa Barbara Botanic Garden, *in litt.* 2001). *Chlorogalum purpureum* var. *purpureum* has an inflorescence that is 25 to 40 cm (10 to 16 in) high, in contrast to *C. p.* var. *reductum* which has a shorter inflorescence that is 10 to 20 cm (4 to 8 in) high (Wilken 2000, Hoover 1964, Jernstedt 1993). Studies are currently underway to examine the phylogenetic relationships within *Chlorogalum* species (D. Wilken, *in litt.* 2001).

Chlorogalum purpureum is a summer-dormant perennial herb that forms a bulb. The inflorescence develops during early spring, followed by flowering and fruit development during May and June. By the time the fruit has matured, the leaves wither and the inflorescence dries and turns light brown in color. Reproduction is primarily by seed, and the seed set apparently increases with insect pollination (D. Wilken, *in litt.* 1998). Like other members of the lily family, *C. purpureum* is probably in a mycorrhizal relationship with a fungus (a close association between the plant and soil fungus, where the fungus aids in nutrient and water uptake), which can alter growth and competitive

interactions between species (Allen 1991). The taxon also frequently grows on soils that are cryptogamic or have cryptogamic crusts; cryptogamic crusts consist of nonvascular photosynthetic plants (primarily cyanobacteria, green algae, lichens, and mosses) that protect the soils from erosion, aid in water infiltration, augment sites for seed germination, aid in carbon and nitrogen fixation, and increase soil nutrients (Beymer 1992, Belnap *et al.* 2001). These special crusts may enhance the habitat conditions, thus increasing the likelihood that young bulbs will survive over the long term. Although the relationship is not well understood and more research is needed, cryptogamic crusts are also known to decrease annual weed growth (Belnap *et al.* 2001).

Chlorogalum purpureum var. *purpureum*

Chlorogalum purpureum var. *purpureum* is located on Fort Hunter Liggett and Camp Roberts military lands, which are located on the eastern side of the Santa Lucia Range in southern Monterey County. The known populations primarily exist within an open grassland community, with a smaller number of individuals found within scattered oak woodland communities and open areas within shrubland communities. A low amount of cover of other herbaceous grasses and herbs is present, possibly reducing the competition for resources. Cryptogamic crusts are frequently found in areas where *Chlorogalum purpureum* var. *purpureum* occurs (B. Painter, The Jepson Herbarium, pers. comm. 2001).

The species was first described by Townsend Stith Brandegee in 1893. Following the initial collection and description, historic occurrences of plants were identified at ''Milpitas Ranch'', ''the plain west of Jolon'', ''near Jolon'', ''open grassy areas near Jolon'', and a number of other locations within what is currently Fort Hunter Liggett property (Hoover 1940; Skinner and Pavlik 1994; Matthews 1997 and Painter 1999 in Wilken 2000). Although currently known to exist only on military property at Fort Hunter Liggett and Camp Roberts, recent surveys along the boundary of Training Area 13 at Fort Hunter Liggett suggest that the species may be found on privately owned property adjacent to Fort Hunter Liggett (Wilken 2000).

While a thorough survey of the installation has not yet been completed. *Chlorogalum purpureum* var. *purpureum* has been found at a number of sites on Fort Hunter Liggett, including the cantonment, Ammunition Supply Point (ASP), and Training Areas 10, 13, 22, 23, 24, and 25. Surveys of *Chlorogalum purpureum* var. *purpureum* conducted at Fort Hunter Liggett have found the plants to occur in scattered clusters. Recent surveys have characterized the species habitat, including topography, microhabitat communities, and general soil types. Depending on the location, plants may occur on both deep and relatively thin soils, which are frequently cryptogamic (dominated by cyanobacteria) (B. Painter, pers. comm. 2001). Most of the soils are loamy and are underlain by clay, but fine gravel, generally less than 5 mm (0.2 in) in diameter, is also sometimes present (Wilken 2000). Cryptogamic crusts with a dominant component of cyanobacteria are observed frequently on the installation, in addition to a substantial number of mosses in the cantonment area (B. Painter, pers. comm. 2001). Cyanobacterial organisms within a cryptogamic crust may be visible as black filaments on or near the soils surface, primarily when soil conditions are moist (Belnap et al. 2001). During surveys conducted in 2000, most (78 percent) of the sites where the species occurs were associated with flat topography, with the majority of the others on slopes of less than 10 percent (Wilken 2000). The sites are most frequently within small basins or along the base of hills, with a few populations occurring along ridge-top terraces (H. Crowell, Service, pers. obs.; D. Wilken, *in litt.*, 2001). These areas are between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation. Examination of digital data shows a small percentage of plants occur on slopes up to 50 percent at Fort Hunter Liggett. No strong association appears to exist with respect to slope aspect (Wilken 2000). These characteristics of topography, elevation, and soil type support the following associated species: *Agoseris grandiflora* (bigflower agoseris), *Aira caryophylla* (silver European hairgrass), *Bromus hordeaceus* (soft brome), *Castilleja densiflora* (dense flower Indian paintbrush), *Clarkia speciosa* (redspot clarkia), *Erodium* spp. (storksbill, filaree), *Hypochaeris glabra* (smooth cat's-ear), *Lasthenia californica* (goldfields), *Linanthus liniflorus* (narrow flowered flaxflower), *Micropus californicus* (slender cottonweed), and *Navarretia* spp. (pincushion plant). Of the known sites surveyed in 2000, approximately 42 percent were found in grassland communities, 29 percent were found between tree canopies in oak savanna or woodland communities, 13 percent were found to occur along ecotones between grassland and either oak woodland or shrubland communities, and the remaining were located within open areas between shrub species, most commonly *Eriogonum fasciculatum* (California buckwheat) and *Adenostoma fasciculatum* (chamise)(Wilken 2000). Within the grassland community, the most common grass species (e.g., *A. caryophylla* and *B. hordeaceus*) did not always dominate in terms of frequency or cover; the most frequent species were annual dicotyledons (plants with a pair of embryonic seed leaves that appear at germination) such as *L. californica*, *L. liniflorus*, and *M. californicus* (Wilken 2000).

Although a thorough survey of the installation has not been completed, surveys conducted at Camp Roberts have found *Chlorogalum purpureum* var. *purpureum* at one location on the west side of the installation, highly correlated with and almost entirely restricted to claypan soils which are frequently cryptogamic. The *C. p.* var. *purpureum* population (estimated at 10,000 individuals in 2000) at Camp Roberts occupies approximately 81 hectares (ha) (200 acres (ac)) and occurs in annual grasslands north of the Nacimiento River in Training Areas O2 and O3 (CANG 2001). *Chlorogalum purpureum* var. *purpureum* predominately occurs on soils with a high concentration of pebbles or gravel underlain by hard-packed clay (CANG 2001). The claypan soils are of the Placentia complex (sandy loam soils, underlain by clay soils, which become very hard and friable on a 5 to 9 percent slope), with a much smaller percentage of plants occurring on the Arbuckle-Positas complex (very deep, well-drained sandy and gravelly loam soils with a 9 to15 percent slope) (USDA 2000, CANG 2001). As at Fort Hunter Liggett, the frequently observed cryptogamic soil crusts are composed primarily of cyanobacteria (B. Painter, pers. comm. 2001). The elevation of the *C. p.* var. *purpureum* population is lower than what is found at Fort Hunter Liggett, ranging between 244 and 256 m (800 and 840 ft) at Camp Roberts. At Camp Roberts, *C. p.* var. *purpureum* occupies microhabitat sites found within open grasslands or surrounded by scattered oak woodlands. Little cover by other herbaceous grasses and forbes is present. Common plant associations include *Erodium* spp., *Hemizonia* spp. (tarplant, tarweed), *Trichostema lanceolatum* (vinegar weed), *Eremocarpus setigerus* (turkey mullein, dove weed), *Bromus* spp. (brome), *Amsinckia* spp. (fiddleneck), and

Nassella spp. (needlegrass) (J. Olson *in* CANG 2001). During recent surveys, *Erodium* spp. was the most common associate (J. Olson *in* CA ARNG 2001). Based on their recent surveys, Camp Roberts believes grazing by sheep (through a Camp Roberts agricultural lease) may be beneficial to *C. p.* var. *purpureum* by reducing competition from other herbaceous species (CANG 2000). However, more studies are needed to test this hypothesis.

Chlorogalum purpureum var. *reductum*

Chlorogalum purpureum var. *reductum* has been found at only two sites in central San Luis Obispo County. The larger site, located near Camatta Canyon, is adjacent to the two-lane State highway 58 on a narrow, flat-topped ridge that supports blue oak savannah on Forest Service lands within the LPNF. The population continues north of the highway on private lands. A few plants (213 individuals counted in 2000) also exist on the right-of-way along the highway, which is designated as a Botanical Management Area by CalTrans (J. Luchetta, Department of Transportation, *in litt.* 2001). The taxon occurs on hard, red claypan soils on flat or gently sloping terrain. *Chlorogalum purpureum* var. *reductum* occupies microhabitat sites found within open grasslands, oak woodlands and oak savannah (*Quercus douglasii*), and open areas between shrub species, most commonly *Adenostoma fasciculatum* (chamise) (Borchert 1981, Warner 1991). Cover from other herbaceous species is minimal, with most herbaceous species not growing above 10 cm (4 in) high. As with *C. p.* var. *purpurem*, plants appear to be associated with a cryptogamic crust (B. Painter, pers. comm. 1998). The elevation of the larger site population, located near Camatta Canyon, is between 305 and 625 m (1,000 and 2,050 ft). This population is estimated to cover approximately 3 ha (8 ac) on the south side of the highway, with likely a smaller amount of area on private property on the north side of the highway (USFWS 2001). Site visits during 2001 revealed a decrease in the number of flowering plants compared to 1994 and 1995 (A. Koch, California Department of Fish and Game, pers. comm. 2001). The second site is located approximately 5 to 8 kilometers (km) (3 to 5 miles (mi)) south of the large site and occupies less than 0.1 ha (0.25 ac), consisting of several hundred plants in two or more patches on private land (USFWS 2001; A. Koch, pers. comm. 2001).

On LPNF land, relative cover of other herbaceous grasses and forbes is low, with these associated plants being generally less than 10 cm (4 in) high (Borchert 1981). The soil type in this area has been described as well-drained red clay that contains a large amount of gravel and pebbles (Hoover 1964, Lopez 1992). A soil survey at LPNF found this general area to be made up of the Modesto-Yorba-Agua Dulce families of soils. Modesto soils (30 percent) are soft, grayish-brown coarse sandy loams with 10 percent pebbles. Yorba soils (30 percent) are slightly hard, light olive-brown loams with 10 percent pebbles. Agua Dulce soils (25 percent) are soft, brown sandy loams with 10 percent pebbles and 2 percent cobbles (USDA 1993). However, this soil survey may have been too general to have captured the exact soil type at this site. A substantial amount of gopher activity has been observed surrounding, but not within, the large *Chlorogalum purpureum* var. *reductum* population, suggesting that the hard soils where the plant occurs are difficult for gophers to move through (M. Borchert, LPNF, pers. comm., 2001). Native plants associated with *Chlorogalum purpureum* var. *reductum* include *Achyrachaena mollis* (blow-wives), *Adenostoma fasciculatum* (chamise), *Allium* spp. (onion, garlic), *Brodiaea coronaria* (crown brodiaea), *Calystegia malacophylla* (morning-glory, Sierra false bindweed), *Clarkia purpurea* (winecup clarkia), *Crassula erecta* (= *Crassula connata* var. *connata*, sand pygmy weed), *Dichelostemma pulchellum* (= *Dichelostemma capitatum* ssp. *capitatum*, blue dicks), *Erigonum elongatum* (wild or longstem buckwheat), *Eriogonum fasciculatum* (California buckwheat), *Lasthenia chrysostoma* (goldfields), *Layia platyglossa* (tidy-tips), *Lepidium* spp. (peppergrass, pepperwort), *Linanthus liniflorus* (narrow flowered flaxflower), *Lupinus concinnus* (Bajada lupine), *Lupinus* spp. (lupine), *Malacothrix* spp. (desert dandelion), *Matricaria matricarioides* (pineapple weed), *Micropus californicus* (q tips), *Orthocarpus densiflorus* (= *Castilleja densiflora* ssp. *densiflora*, dense flower Indian paintbrush), *Orthocarpus* spp. (Indian paintbrush, owl's clover), *Pinus sabiniana* (gray or foothill pine), *Plagiobothrys nothofulvus* (popcornflower), *Poa* spp. (bluegrass), *Quercus garryana* (Oregon oak), *Sanicula bipinnatifida* (purple sanicle, shoe buttons), *Sanicula* spp. (sanicle), *Vulpia pacifica* (= *Vulpia microstachys* var. *pauciflora*, Pacific fescue), *Vulpia reflexa* (= *Vulpia microstachys* var. *pauciflora*, Pacific fescue), and *Zigadenus* spp. (death camas); and nonnative plants, including *Avena barbata* (slender wild oat), *Bromus hordeaceus* (soft brome), *Bromus rubens* (red brome), *Erodium botrys* (storksbill, filaree), *Erodium moschatum* (storksbill, filaree), *Hypochaeris glabra* (smooth cat's ear), and *Schismus barbatus* (Mediterranean grass).

Chlorogalum purpureum var. purpureum and *C. p.* var. *reductum* appear to be narrowly distributed. Some discontinuities in their distribution are likely due to unsuitable intervening habitat and establishment of roadways that fragment the populations. In addition, *C. p.* var. *purpureum* distribution was likely affected by the settlement of Jolon in Monterey County, row crop farming, establishment of invasive plant species such as *Centuarea solstitialis* (yellow star-thistle) and a number of nonnative grasses, establishment of military training facilities at Fort Hunter Liggett and Camp Roberts, and possibly the establishment of the San Antonio Reservoir in southern Monterey County. Habitats for both varieties of *Chlorogalum* may change as a result of rainfall, fires, and other naturally occurring events. These factors may cause the habitat suitability of given areas to vary over time, thus affecting the distribution of *C. p.* var. *purpureum* and *C. p.* var. *reductum*.

Previous Federal Action

Federal actions for *Chlorogalum purpureum* began when a report (House Doc. No. 94–51) of plants considered to be endangered, threatened, or extinct in the United States was prepared by the Smithsonian Institute and presented to Congress on January 9, 1975. Both *C. p.* var. *purpureum* and *C. p.* var. *reductum* were included as endangered plant species. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) stating its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Endangered Species Act required that all proposals more than two years old be withdrawn. On

December 10, 1979, the Service withdrew the portion of the June 16, 1976 proposal that had not been made final, including *C. p.* var. *purpureum* and *C. p.* var. *reductum.*

On December 15, 1980, the Service published an updated Candidate Notice of Review for plants (45 FR 82480) which included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as category 2 candidates (species for which data in our possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). Both *Chlorogalum* taxa were included in the revised plant notices of review that were published on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144) as category 1 candidates (species for which we had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority).

The proposed rule to list both varieties of *Chlorogalum purpureum* as threatened species was published in the **Federal Register** on March 30, 1998 (63 FR 15158). The final rule listing them as threatened was published in the **Federal Register** on March 20, 2000 (65 FR 14878).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chlorogalum purpureum* was listed, we found that designation of critical habitat was prudent but not determinable, and that we would designate critical habitat once we had gathered the necessary data.

On June 17, 1999, our failure to issue final rules for listing *Chlorogalum purpureum* and eight other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 9 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. Subsequently, the parties agreed to extend the deadline to submit for publication in the **Federal Register** a proposed critical habitat designation to November 2, 2001.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). We also need to determine if the primary constituent elements may require special management considerations or protection.

When we designate critical habitat at the time of listing, as required under Section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR

424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Chlorogalum purpureum.* This information included data from the California Natural Diversity Data Base, soil survey maps (Soil Conservation Service 1978, 1979), recent biological surveys, reports and aerial photos, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits at locations managed by Federal agencies, including Fort Hunter Liggett, Camp Roberts, and LPNF.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historic geographical and ecological distributions of a species.

Changes in the habitat of both varieties of *Chlorogalum purpureum* have occurred due to alteration of lands, direct loss of plants due to construction, widening of roads, displacement by nonnative annual grasses, inappropriate livestock grazing, and potentially by alteration of fire cycles. Livestock grazing may be detrimental to this taxon depending on the intensity of livestock use and the extent to which livestock congregate in the population area. Special management for critical habitat may be needed for conditions where indirect, negative impacts from recreation, military activities, and competition from nonnative annual grasses occur. These activities will likely destroy any cryptogamic crusts that are present, thus negatively affecting vascular plant germination and decreasing the amount of nutrients available for proper plant development (Belnap *et al.* 2001). In addition to indirect impacts, direct loss of individual plants can occur due to military training activities at Fort Hunter Liggett and Camp Roberts, and off-road vehicle (ORV) use at LPNF. The habitat that supports both varieties of *C. purpureum* should have little to no soil surface disturbance. Soil surface disturbance will likely result in the death of seeds, seedlings and adult plants through burial or grinding. Death of seeds, plants and any cryptogamic crust organisms can occur depending on the severity, size, frequency, and timing of soil disturbance. Vehicles and trampling will compress the surface and could influence the ability of seedlings to establish. In addition, tracked vehicles will turn over soils, thus killing any adult plants or seedlings by damaging any bulbs that are in their first years of growth and burying any crustal organisms that were present.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* consist of, but are not limited to:

(1) Soils that are mostly gravelly to sandy and well drained on the surface, are underlain by clay soils, and are frequently cryptogamic;

(2) Plant communities that support associated species, including valley and foothill grassland (most similar to the needlegrass series and California annual grassland series in Sawyer and Keeler-Wolf (1995)), blue oak woodland (*Quercus douglasii*) or oak savannahs (Holland 1986), and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *purpureum* areas is unknown). Within these vegetation community types, *C. p.* var. *purpureum* appears where there is little cover of other species which compete for resources available for growth and reproduction; and,

(3) Areas of sufficient size and configuration to maintain ecosystem functions and processes, such as pollinator activity between existing colonies, hydrologic regime, appropriate predator-prey populations to prevent excessive herbivory, and seed dispersal mechanisms between existing colonies and other potentially suitable sites.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* include the following components:

(1) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface, and are frequently cryptogamic;

(2) Plant communities that support the appropriate associated species, including grassland (most similar to the California annual grassland series in Sawyer and Keeler-Wolf (1995) or the pine bluegrass grassland, non-native grassland and wildflower field descriptions *in* Holland (1986)), blue oak woodland (*Quercus douglasii*) or oak savannahs (Holland 1986), oak woodland (Quercus douglasii), oak savannahs, and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *reductum* areas is unknown). Within these vegetation communities *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction; and,

(3) Areas of sufficient size and configuration to maintain ecosystem functions and processes, such as pollinator activity between existing colonies, hydrologic regime, appropriate predator-prey populations to prevent excessive herbivory, and seed dispersal mechanisms between existing colonies and other potentially suitable sites.

Criteria Used To Identify Critical Habitat

Critical habitat being proposed for *Chlorogalum purpureum* var. *purpureum* includes the only known two areas where the species currently occurs, the Fort Hunter Liggett Unit and Camp Roberts Unit. These units were delineated with a GIS model using ArcView. The GIS model identified areas with the combination of appropriate soils, a slope of 20 percent or less, and a habitat type of either grassland, oak woodland, oak savannah, or open areas within shrubland communities. We selected only those areas identified in the model which included known populations of *C. p.* var. *purpureum.* The area boundary was then extended to the nearest ridgeline in order to encompass the land immediately adjacent to and upslope of the area identified by the model. In locations where using a ridgeline was not feasible or was inappropriate, other geographic or man-made structures were used to delineate the critical habitat boundary, such as riverbeds, an abrupt change in elevation, or roads. This ensures that the proposed critical habitat included all the PCEs, especially the maintenance of ecosystem functions and processes essential to the conservation of the species.

It is essential to manage these areas in a manner that provides for the conservation of the species. This includes not only the area where the species is currently present, but providing for the natural population

fluctuations that occur in response to natural and unpredictable events. As described in the Background and Primary Constituent Elements sections, the species is dependant on habitat components beyond the immediate areas on which the plant occurs. These components include the specific soil types, the supporting vegetation communities with which the species is associated, and sufficient habitat areas to support the ecological processes on which the species depends. These ecological processes include hydrologic regimes on which the plant and supporting community depend, maintaining the reproductive capability of the plant by providing a diverse habitat community that supports the appropriate pollinators and seed dispersal mechanisms, providing sufficient areas of appropriate habitat so that the plant can expand and recolonize areas, maintaining natural predator-prey relationships that promote species' survivorship, and reducing competition from exotic species or aggressive species responding to unnatural habitat management practices. Since the species only occurs in the two units, providing for the specific biological needs of the species, as defined by the primary constituent elements, within the units is essential for the conservation of the species.

Critical habitat being proposed for *Chlorogalum purpureum* var. *reductum* includes one unit, the Camatta Canyon unit, which currently supports two known populations of this species. Limited data on soils and habitats were available for delineating the critical habitat boundaries for *C. p.* var. *reductum.* No GIS data layers were available to create a combined soil, slope and vegetation model such as that created for *C. p.* var. *purpureum.* Therefore, the critical habitat designation is based on the existing known populations, and observations of soil characteristics and vegetation community types made by various researchers and agencies. This unit was developed by encompassing the extent of appropriate topography and vegetation community types surrounding the known populations.

As with the *C. p.* var. *purpureum* units, it is essential to manage this area in a manner that provides for the conservation of the species. This includes not only the area where the species is currently present, but providing for the natural population fluctuations that occur in response to natural and unpredictable events. As described in the Background and Primary Constituent Elements sections, the species is dependant on habitat components beyond the immediate areas on which the plant occurs. These components include the specific soil types, the supporting vegetation communities with which the species is associated, and sufficient habitat areas to support the ecological processes on which the species depends. These ecological processes include hydrologic regimes on which the plant and supporting community depend, maintaining the reproductive capability of the plant by providing a diverse habitat community that supports the appropriate pollinators and seed dispersal mechanisms, providing sufficient areas of appropriate habitat so that the plant can expand and recolonize areas, maintaining natural predator-prey relationships that promote species' survivorship, and reducing competition from exotic species or aggressive species responding to unnatural habitat management practices. Since the only known occurrence of the species is within this unit, providing for the specific biological needs of the species, as defined by the primary constituent elements, within the unit is essential for the conservation of the species.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we generally do not include these areas in critical habitat designations if they meet the following three criteria—(1) a current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then we generally believe that the lands covered under the plan would not meet the definition of critical habitat.

The CANG has developed a draft INRMP for Camp Roberts to address the requirements of Department of Defense Instruction 4715.3. The INRMP is intended to provide an adaptive management approach to all natural resource issues on the installation. Although the Camp Roberts draft INRMP calls for annual monitoring of *Chlorogalum purpureum,* it does not provide any specific measures that ensure the conservation and recovery of this species. The INRMP is currently being reviewed and revised. However, because such measures are not currently in place, we are including those portions of Camp Roberts that support *C. purpureum* populations or the primary constituent elements in this proposed critical habitat designation. Fort Hunter Liggett is currently preparing a draft INRMP, however, the Service has not yet received a copy for review.

Determining the specific areas that *C. purpureum* occupies is challenging; during good flowering years, presence of this taxon can be difficult to document during the dormant stage of the plant because leaves and inflorescences often break off and disappear. That the taxon is not visible in all years does not mean the taxon does not exist at a site. Therefore, patches of occupied habitat are interspersed with patches of unknown occupancy; our critical habitat units reflect the nature of the habitat, the life history characteristics of this taxon, habitat connectivity between currently known populations, and opportunities for management to maintain habitat/plant association function and integrity on a larger landscape level.

In selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements or otherwise contribute to the conservation of *C. purpureum.* However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. purpureum.* Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads,

airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, we selected critical habitat areas that provide for the conservation of both varieties of *Chlorogalum pupureum* in three units where it is known to occur. Areas on the perimeter of the critical habitat designation being used for crop production were not proposed for designation; however, we recognize that these areas may include habitat presently or historically occupied by *Chlorogalum purpureum.* In addition, some areas not included in the critical habitat designation, including other areas identified in the GIS model used for *C. p.* var. *purpureum,* may include habitat appropriate for introduction of *C. purpureum* in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of *Chlorogalum purpureum.* The areas being proposed as critical habitat are within or surrounding Fort Hunter Liggett in southern Monterey County, within or surrounding Camp Roberts in northern San Luis Obispo County, and on both the north and south sides of Highway 58 near Camatta Canyon in central San Luis Obispo County. We propose to designate approximately 6,965 ha (17,210 ac) of land as critical habitat for *C. p.* var. *purpureum* and 1,933 ha (4,770 ac) of land as critical habitat for *C. p.* var. *reductum.* Approximately 68 percent of this total area consists of Federal lands, private lands comprise approximately 32 percent of the proposed critical habitat, and State lands comprise less than 0.1 percent.

A brief description of each critical habitat unit is given below:

Fort Hunter Liggett Unit

This unit consists of two separate areas that encompass both Fort Hunter Liggett property and private property. Fort Hunter Liggett Unit A (5,930 ha (14,660 ac)) includes portions of training areas 10, 13, 22, 25, 29, the ASP, and the cantonment of Fort Hunter Liggett property, in addition to private property east of Jolon Road. The critical habitat boundary generally follows the San Antonio River bed on the south from the cantonment buildings southeast to training area 29 near Tule Canyon. The boundary heads north, excluding crop lands or tilled agricultural lands, west following a ridgeline into Fort Hunter Liggett training area 10, and back to the area just north of the cantonment buildings. Fort Hunter Liggett Unit B (60 ha (145 ac)) occurs at the boundary of training areas 23, 24 and 27.

The Fort Hunter Liggett critical habitat unit includes one of only two areas where *Chlorogalum purpureum* var. *purpureum* is known to occur. It is likely that this population is a remnant of a much larger population that historically extended far beyond the Fort Hunter Liggett boundaries. The protection and recovery of this area is essential for maintaining the remaining genetic variability of this plant and connectivity between patches of plants at Fort Hunter Liggett is essential to facilitate the gene flow within this unit. Fort Hunter Liggett also has favorable habitat conditions for population expansion and persistence; with the reduction of threats through appropriate management, this area could support a larger population.

Camp Roberts Unit

This unit consists of one area that encompasses both Camp Roberts property and private property. The Camp Roberts Unit (975 ha (2,405 ac)) boundary generally follows the Nacimiento River bed along Tower Road to the area just south of the Camp Roberts machine gun range. The boundary then follows Tower Road southwest to Avery Road, west to San Antonio Road, and north to a ridgeline that extends onto private property that is northwest of the Camp Roberts installation boundary. The Camp Roberts unit excludes those areas currently classified as dedicated impact areas for high-explosive ordnance. This critical habitat unit includes one of only two areas where *Chlorogalum purpureum* var. *purpureum* is known to occur. The unit contains large patches of plants that are capable of producing large numbers of seeds in good years, which is important for this species to survive through natural and human-caused changes or events. The protection and recovery of this area are essential because it is occupied and it contains favorable habitat conditions for population increases with appropriate habitat management.

Camatta Canyon Unit

This unit consists of one area that encompasses the similar topographic and vegetative community types that surround the current population. The Camatta Canyon Unit (1,933 ha (4,770 ac)) encompasses the plateau area on both the north and south sides of Highway 58 near Camatta Canyon, extending south approximately 5 km (3 mi) to include two private inholding areas within the LPNF boundaries. This critical habitat unit includes the known population area and adjacent surrounding areas as described above in the ''Criteria Used to Identify Critical Habitat'' section. This critical habitat unit is the only area where *Chlorogalum purpureum* var. *reductum* is known to occur. It is essential to protect this population from further loss of individual plants and loss of genetic diversity, as well as safeguard the population against random natural or human-caused events.

Lands proposed are under private, State, and Federal jurisdiction, with State lands managed by CalTrans, and Federal lands managed by the CANG at Camp Roberts, Army Reserve at Fort Hunter-Liggett, and the Forest Service (i.e., LPNF). The approximate areas of proposed critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP

Unit name	Private	State	Federal	Total
Fort Hunter Liggett	1,200 ha		4,790 ha	5,990 ha
	(2,965 ac)		(11,840 ac)	(14,805 ac)
Camp Roberts	195 ha		780 ha	975 ha
	(475 ac)		(1,930 ac)	(2,405 ac)
Camatta Canyon	1,450 ha	8 ha	475 ha	1,933 ha

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP

Unit name	Private	State	Federal	Total
Total	(3,580 ac) .... 2,845 ha ..... (7,020 ac)	(20 ac) ..... 8 ha ..... (20 ac)	(1,170 ac) .... 6,045 ha ..... (14,940 ac) ..	(4,770 ac) 8,898 ha (21,980 ac)

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of precision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7 Consultation

Critical habitat receives protection under section 7 of the Act through the consultation requirement and the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not jeopardize the continued existence of the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Chlorogalum purpureum* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration, Environmental Protection Agency, or Federal Emergency Management Authority funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not

signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe within any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of *Chlorogalum purpureum.* Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by *Chlorogalum purpureum* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *C. purpureum* may result in an additional regulatory burden when a federal nexus exists.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to the following:

(1) Degradation or destruction of grassland, oak woodland, and oak savannah communities, and open areas found within shrubland communities, including but not limited to, off-road vehicle use, introduction of nonnative species, heavy recreational use, military bivouacking activities, maintenance of an unnatural fire regime, development, road maintenance, agricultural activities, discing, mowing, or chaining;

(2) Soil compaction or disturbance of upper soil surfaces, including the biological soil crusts. These activities include but are not limited to grazing; fire management; oil spills; mechanical disturbance such as by tracked or heavy wheeled vehicles; trampling by livestock and people;

(3) Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (e.g., from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development); military activities of the U.S. Department of Defense (Army Reserve and California Army National Guard) on their lands or lands under their jurisdiction; activities of the Forest Service on their lands or lands under their jurisdiction; the release or authorization of release of biological control agents by the U.S. Department of Agriculture; regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Chlorogalum purpureum.* Listed wildlife species identified either on Fort Hunter Liggett or Camp Roberts, or in close proximity to these areas include San Joaquin kit fox (*Vulpes macrotis mutica*), vernal pool fairy shrimp (*Branchinecta lynchi*), California red-legged frog (*Rana aurora draytonii*), arroyo toad (*Bufo californicus*), bald eagle (*Haliaeetus leucocephalus*), California condor (*Gymnogyps californianus*), and least Bell's vireo (*Vireo bellii pusillus*). In addition, a candidate wildlife species (taxon for which the Service has sufficient biological information to support a proposal to list as endangered or threatened), California tiger salamander (*Ambystoma tigrinum californiense*), has been documented at Fort Hunter Liggett and has potential to occur at Camp Roberts. Species that are listed under the Act that may occur in the same general area as *C. p.* var. *reductum* include *Branchinecta lynchi,* longhorn fairy shrimp (*Branchinecta longientenna*), *Rana aurora draytonii,* and *Gymnogyps californianus.*

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Economic Analysis and Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other

relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Relationship to Habitat Conservation Plans

We also considered the status of habitat conservation plan (HCP) efforts in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. Currently, there are no habitat conservation plans (HCPs) that include *Chlorogalum purpureum* as a covered species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Chlorogalum purpureum* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Chlorogalum purpureum* var. *purpureum* habitat and *C. p.* var. *reductum* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Chlorogalum* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values'', and reductions in administrative costs);

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(7) The effects of *Chlorogalum purpureum* critical habitat designation on military lands and how it would affect military activities, particular military activities at Fort Hunter Liggett and Camp Roberts.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may also comment via the internet to fw1chlorogalum@r1.fws.gov. Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN–1018–AG75 and your name and return address in your internet message.'' If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the internet address *fw1chlorogalum@r1.fws.gov* will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, CA.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final

rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the ''Supplementary Information'' section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2). Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would be considered as jeopardy under the Act in areas occupied by the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

TABLE 2.—IMPACTS OF *Chlorogalum Purpureum* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities such as field maneuvers by troops or vehicles, training, bivouacking, construction and facility development conducted by the Army Reserve at Fort Hunter Liggett and the California Army National Guard at Camp Roberts. Activities authorized or conducted by the Forest Service at Los Padres National Forest, such as livestock grazing, road maintenance or construction, and recreation.	Activities by these Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chlorogalum purpureum* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Chlorogalum*

purpureum since its listing in 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, is not expected to significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a small number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Chlorogalum purpureum*. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since *Chlorogalum purpureum* has only been listed since March 2000, and there have only been two formal consultations involving the species, neither of which involved small entities, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because *Chlorogalum purpureum* has been listed only a relatively short time and there have been few activities with Federal involvement in these areas during this time, there is not a detailed history of consultations based on the listing of this species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

Approximately, sixty-eight percent of the designation is on Federal lands. On Federal lands included in this proposed critical habitat designation, grazing is the only activity identified as possibly having an economic affect on small entities. Grazing occurs on Camp Roberts and on the Los Padres National Forest and may be reinitiated on Fort Hunter Liggett in the future. There are currently two grazing permittees on all Federal lands included in this rule, so this rule will not affect a substantial number of small entities involved in grazing or other activities on Federal lands.

Most of the remainder of the proposed designation is on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Current activities of an economic nature that

occur on private lands in the area encompassed by this proposed designation are primarily agricultural, such as live-stock grazing and farming. Because these areas are zoned rural and not near cities or towns, multiple-unit residential or commercial development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects elsewhere, is unlikely to be involved in projects in these areas. In rural regions of San Luis Obispo and Monterey counties, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Army Corps of Engineers (ACOE) or the Federal Highway Administration (FHWA). In FHWA consultations, the applicant is either the California State Department of Transportation or the County, neither of which is considered a small entity as defined here. ACOE consultations involve wetlands or waterways and occur due to the presence of species (or their critical habitat) that spend at least part of their life in aquatic habitats. *Chlorogalum purpureum* is an upland plant species and unlikely to be the subject of consultations with the ACOE. In agricultural areas, the Natural Resources Conservation Service (NRCS) occasionally funds activities on farms or ranches that require consultation with us. These consultations are infrequent, however. In the last decade, in all of Monterey and San Luis Obispo counties combined, the NRCS has completed only four formal consultations with the Service. San Luis Obispo and Monterey counties encompass about 4 million acres of land and support over 40 listed species. Based on the low level of past activity, we expect few consultations with the NRCS or other federal agencies on the approximately 7000 acres of non-federal lands proposed in this rule. For these reasons, the Service determines that the number of small entities likely to be affected by this rule will not be substantial.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Chlorogalum purpureum*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *Chlorogalum purpureum* var. *reductum* as a rare species under the California Endangered Species Act in 1978, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously published analyses of the likely economic impacts of designating critical habitat for other California plant species, such as *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Like *Chlorogalum purpureum*, *C. robusta* var. *hartwegii* is a native species restricted to certain specific habitat types along the central coast of California and may require similar protective and conservation measures. *Chorizante robusta* var. *hartwegii* differs from Chlorogalum purpureum, in that it occurs closer to the coast, in an area experiencing greater residential and commercial development. Our high-end estimate of the economic effects of designating one critical habitat unit of *C. robusta* var. *hartwegii* ranged from $82,500 to $287,500 over ten years. We believe that the effects of the proposed rule for *Chlorogalum purpureum* will be lower than the economic effects identified for other California plant critical habitat designations, such as *C. robusta* var. *hartwegii*, that occur in regions with higher population densities where commercial, residential, and infrastructure development is more likely. We believe that the effects of the proposed rule for *Chlorogalum purpureum* are likely to be lower than those identified above, due to the greater human population densities and economic activity that is occurring in southern Santa Cruz County where *C. robusta* var. *hartwegii* occurs.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. The entire designation likely involves fewer than 100 privately

owned parcels; many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private parcels within the proposed designation are currently being used for agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement would be through the 2 grazing allotments that currently occur on Federal lands that overlap with the proposed designation, or through ACOE or NRCS activities. We anticipate projects involving these agencies will be infrequent within the proposed designation due to the species biology, proximity to military bases, and (for NRCS) the low level of previous consultation activity in these counties. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would provide can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Chlorogalum purpureum* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we will determine whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorization. Any such activity will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications, and a takings implication assessment is not required. This rule would not take private property. As discussed above, the designation of critical habitat affects only Federal agency actions; it does not provide additional protection for the species on non-Federal lands or regarding actions that lack any Federal involvement. Furthermore, the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. We recognize that Federal projects that also affect private property may be proposed in the future. We fully expect that, through section 7 consultation, such projects can be implemented consistent with the conservation of *Chlorogalum purpureum;* therefore, this rule would not result in a takings.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack any Federal nexus. In areas occupied by *Chlorogalum purpureum,* Federal agencies funding, permitting, or implementing activities are already required, through consultation with us under section 7 of the Act, to avoid jeopardizing the continued existence of *Chlorogalum purpureum.* If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for

case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chlorogalum purpureum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Chlorogalum purpureum* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Heidi E. D. Crowell, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Chlorogalum purpureum* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	* *	*	*		*		*
Chlorogalum purpureum	Purple amole	U.S.A.	(CA) Liliaceae—Lily.	T		17.96(b)	NA
*	* *	*	*		*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding an entry for *Chlorogalum purpureum* under Family Liliaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) * * *

Family Liliaceae: *Chlorogalum purpureum* (purple amole)

(1) Critical habitat units are depicted for Monterey and San Luis Obispo counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* are the habitat components that provide:

(i) Soils that are mostly gravelly to sandy and well drained on the surface, are underlain by clay soils, and are frequently cryptogamic;

(ii) Plant communities that support the appropriate associated species, including valley and foothill grassland (most similar to the needlegrass series and California annual grassland series *in* Sawyer and Keeler-Wolf (1995)), blue oak woodland (*Quercus douglasii*) or oak savannahs (Holland 1986), and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *purpureum* areas is unknown). Within these vegetation community types, *C. p.* var. *purpureum* appears where there is little cover of other species which compete for resources available for growth and reproduction; and,

(iii) Areas of sufficient size and configuration to maintain ecosystem functions and processes, such as pollinator activity between existing colonies, hydrologic regime, appropriate predator-prey populations to prevent excessive herbivory, and seed dispersal

mechanisms between existing colonies and other potentially suitable sites.

(3) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* are the habitat components that provide:

(i) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface, and are frequently cryptogamic;

(ii) Plant communities that support the appropriate associated species, including grassland (most similar to the California annual grassland series *in* Sawyer and Keeler-Wolf (1995) or the pine bluegrass grassland, non-native grassland and wildflower field descriptions *in* Holland (1986)), blue oak woodland (*Quercus douglasii*) or oak savannahs (Holland 1986), and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *reductum* areas is unknown). Within these vegetation community types, *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction; and

(iii) Areas of sufficient size and configuration to maintain ecosystem functions and processes, such as pollinator activity between existing colonies, hydrologic regime, appropriate predator-prey populations to prevent excessive herbivory, and seed dispersal mechanisms between existing colonies and other potentially suitable sites.

(4) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(5) Map 1 follows.

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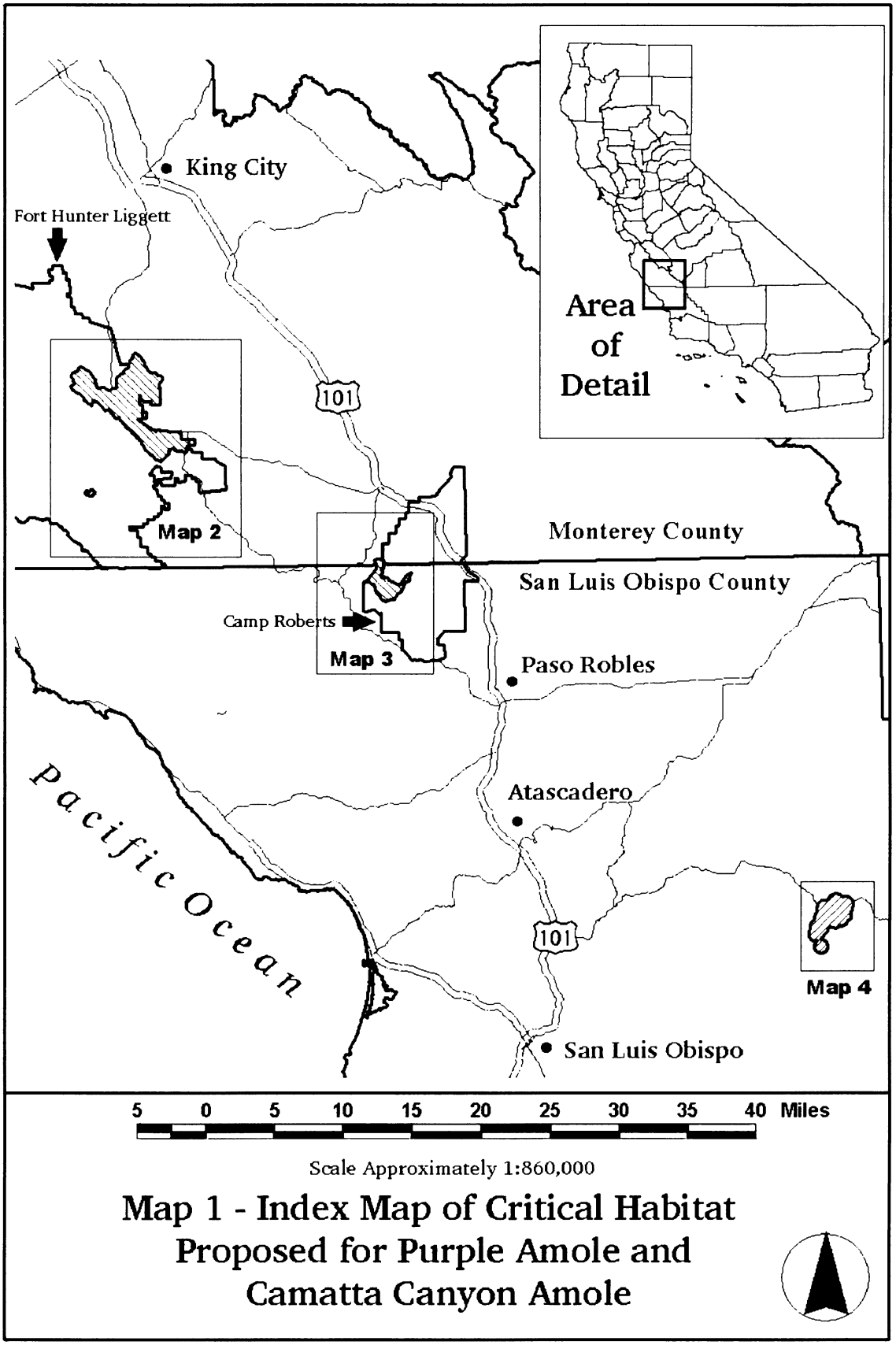

Map 1 - Index Map of Critical Habitat Proposed for Purple Amole and Camatta Canyon Amole

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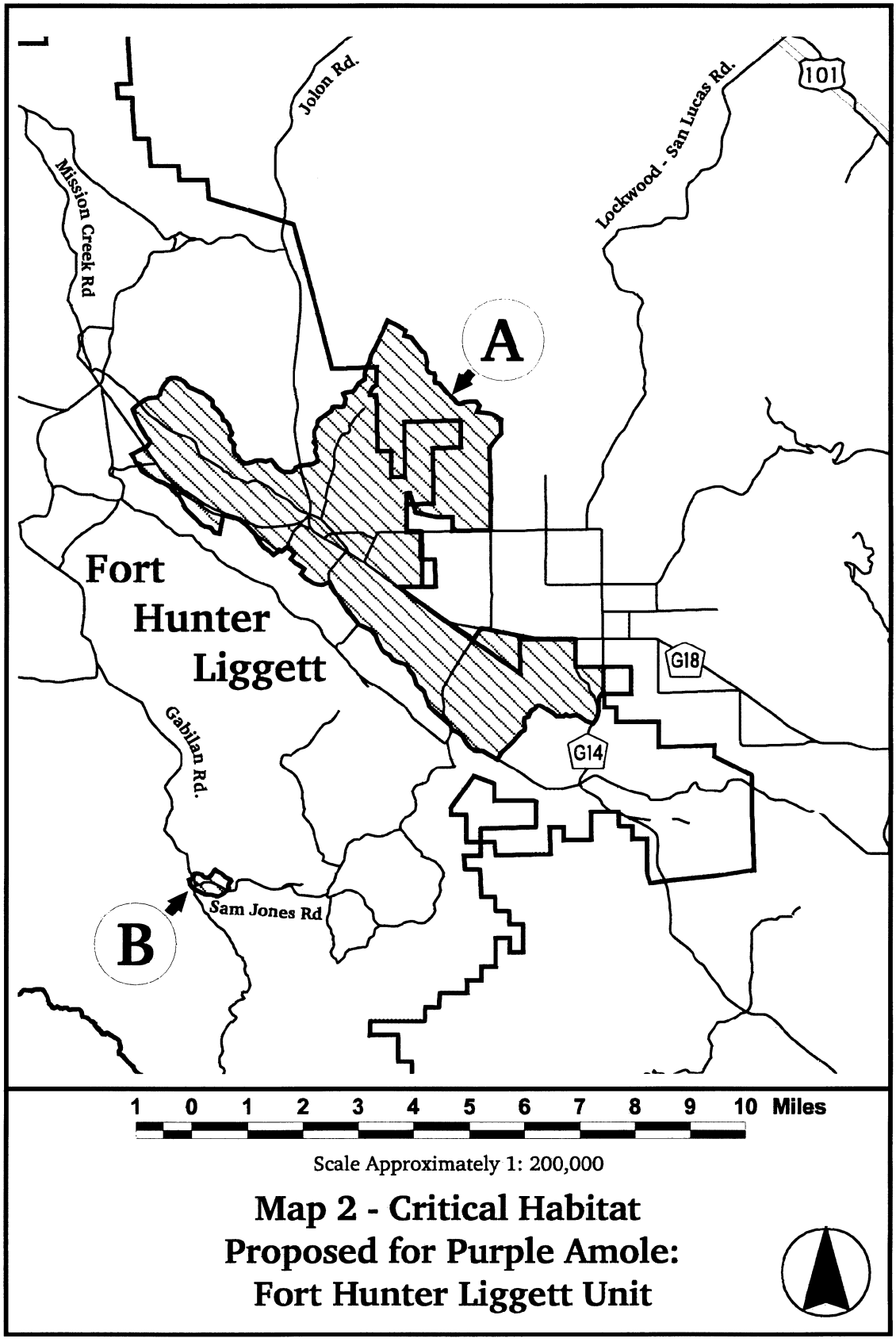
(6) *Fort Hunter Liggett Unit:*

(i) *Chlorogalum purpureum* var. *purpureum.* Fort Hunter Liggett (A) Unit: Monterey County, California. From USGS 1:24,000 quadrangle map Cosio Knob, Espinosa Canyon, Jolon, and Williams Hill. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 668926, 3975810; 668823, 3975890; 668632, 3975980; 668577, 3976120; 668472, 3976230; 668110, 3976530; 667976, 3976680; 667821, 3977100; 667616, 3977300; 667568, 3977460; 667528, 3977590; 667386, 3977730; 667365, 3977860; 667257, 3977910; 667000, 3977990; 666915, 3978050; 666819, 3978190; 666701, 3978240; 666612, 3978330; 666478, 3978570; 666421, 3978750; 666290, 3978900; 666100, 3979000; 665920, 3979070; 665725, 3979340; 665606, 3979460; 665499, 3979630; 665432, 3979740; 665378, 3979850; 665196, 3980060; 665074, 3980330; 664849, 3980230; 664708, 3980260; 664592, 3980300; 664493, 3980360; 664376, 3980430; 664239, 3980560; 664329, 3980710; 664252, 3980770; 664087, 3980890; 663934, 3981020; 664052, 3981180; 663834, 3981360; 663678, 3981230; 663599, 3981270; 663556, 3981220; 663441, 3981140; 663325, 3981220; 663157, 3981350; 663024, 3981510; 662926, 3981730; 662478, 3982170; 662061, 3982300; 661979, 3982300; 661873, 3981750; 661740, 3981780; 661634, 3981930; 661555, 3981940; 661471, 3981950; 661340, 3982010; 661216, 3982180; 661046, 3982330; 660894, 3982490; 660821, 3982650; 660715, 3982860; 660603, 3982950; 660437, 3983130; 660284, 3983240; 660061, 3983300; 659953, 3983400; 659631, 3983590; 659574, 3983710; 659572, 3983790; 659479, 3983780; 659443, 3983880; 659409, 3983940; 659344, 3984070; 659774, 3984290; 659867, 3984390; 659872, 3984440; 659826, 3984500; 659779, 3984570; 659712, 3984680; 659631, 3984840; 659577, 3984930; 659468, 3985130; 659362, 3985400; 659521, 3985550; 659626, 3985610; 659724, 3985670; 659817, 3985720; 659924, 3985730; 660090, 3985750; 660114, 3985790; 660169, 3985830; 660169, 3985880; 660269, 3986090; 660382, 3986220; 660384, 3986270; 660509, 3986320; 660607, 3986320; 660766, 3986270; 660825, 3986240; 660881, 3986190; 660931, 3986120; 660996, 3986060; 661133, 3985990; 661249, 3985930; 661367, 3985890; 661576, 3985740; 661671, 3985650; 661673, 3985570; 661675, 3985500; 661745, 3985430; 661818, 3985380; 661898, 3985290; 661957, 3985220; 661968, 3985140; 661986, 3985080; 662069, 3985050; 662164, 3984920; 662165, 3984850; 662195, 3984790; 662248, 3984710; 662223, 3984650; 662174, 3984610; 662165, 3984520; 662251, 3984420; 662313, 3984360; 662288, 3984290; 662286, 3984220; 662317, 3984110; 662425, 3984010; 662475, 3983890; 662626, 3983800; 662819, 3983840; 662926, 3983890; 663081, 3983900; 663196, 3983860; 663376, 3983920; 663465, 3983820; 663560, 3983690; 663648, 3983610; 663719, 3983560; 663837, 3983570; 663927, 3983550; 664019, 3983580; 664088, 3983680; 664239, 3983750; 664556, 3983780; 664727, 3983850; 664706, 3984020; 664647, 3984160; 664677, 3984260; 664683, 3984340; 664608, 3984420; 664650, 3984530; 664624, 3984650; 664625, 3984760; 664657, 3984820; 664707, 3984920; 664711, 3985000; 664774, 3985090; 664857, 3985150; 664976, 3985250; 665130, 3985360; 665161, 3985450; 665252, 3985490; 665403, 3985450; 665494, 3985480; 665518, 3985550; 665544, 3985700; 665484, 3985790; 665483, 3985870; 665539, 3985890; 665747, 3985920; 665802, 3985960; 665911, 3986150; 666107, 3986270; 666102, 3986420; 666143, 3986590; 666248, 3986780; 666288, 3986990; 666476, 3987340; 666766, 3987990; 666847, 3987950; 666881, 3987940; 666968, 3987900; 667055, 3987850; 667171, 3987780; 667296, 3987700; 667264, 3987630; 667242, 3987540; 667451, 3987500; 667745, 3987120; 667860, 3987020; 667910, 3986770; 667903, 3986600; 667927, 3986510; 668009, 3986460; 668119, 3986460; 668152, 3986360; 668127, 3986220; 668145, 3986170; 668201, 3986160; 668260, 3986160; 668362, 3986020; 668472, 3985900; 668603, 3985770; 668712, 3985660; 668757, 3985580; 668855, 3985550; 668956, 3985600; 669083, 3985620; 669320, 3985630; 669417, 3985490; 669346, 3985330; 669683, 3985270; 669858, 3985230; 669938, 3985190; 669954, 3985140; 670048, 3985090; 670036, 3984940; 670045, 3984680; 669926, 3984550; 669697, 3984270; 669722, 3983480; 669724, 3983280; 669729, 3983110; 669728, 3983000; 669761, 3982760; 669723, 3982620; 669741, 3981860; 668645, 3981830; 668645, 3982250; 668148, 3982250; 667577, 3982370; 667427, 3982950; 667314, 3982930; 667326, 3981820; 667740, 3981810; 667749, 3981440; 667751, 3980180; 667085, 3980180; 668335, 3979250; 669244, 3978640; 669467, 3978960; 670986, 3978670; 672196, 3978650; 672204, 3977830; 673009, 3977830; 673017, 3977120; 672897, 3976940; 672855, 3976700; 672878, 3976530; 672842, 3976410; 672797, 3976290; 672717, 3976160; 672530, 3976240; 672257, 3976420; 672163, 3976410; 672034, 3976370; 671939, 3976420; 671877, 3976380; 671784, 3976360; 671644, 3976390; 671575, 3976460; 671533, 3976490; 671300, 3976630; 671163, 3976710; 671090, 3976690; 671029, 3976610; 670900, 3976540; 670846, 3976370; 670725, 3976320; 670715, 3976230; 670746, 3976060; 670723, 3975960; 670648, 3975920; 670406, 3975670; 670060, 3975320; 669948, 3975110; 669646, 3975280; 669500, 3975350; 669368, 3975370; 669275, 3975360; 669145, 3975480; 669032, 3975610; 668926, 3975810.

(ii) *Chlorogalum purpureum* var. *purpureum.* Fort Hunter Liggett (B) Unit: Monterey County, California. From USGS 1:24,000 quadrangle map Jolon, and Burnett Peak. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 661019, 3971490; 661018, 3971520; 661017, 3971550; 661008, 3971580; 661063, 3971610; 661102, 3971620; 661130, 3971660; 661171, 3971770; 661255, 3971780; 661268, 3971760; 661280, 3971750; 661320, 3971750; 661371, 3971740; 661404, 3971690; 661464, 3971660; 661510, 3971660; 661571, 3971640; 661637, 3971700; 661693, 3971790; 661725, 3971850; 661767, 3971880; 661850, 3971810; 661916, 3971790; 661962, 3971740; 662041, 3971670; 662101, 3971640; 662166, 3971610; 662206, 3971590; 662225, 3971550; 662157, 3971470; 662142, 3971410; 662159, 3971360; 662149, 3971320; 662064, 3971240; 662053, 3971220; 662038, 3971200; 662015, 3971190; 661986, 3971170; 661938, 3971140; 661881, 3971120; 661826, 3971090; 661741, 3971110; 661650, 3971170; 661596, 3971160; 661534, 3971170; 661464, 3971150; 661431, 3971190; 661394, 3971200; 661362, 3971210; 661329, 3971230; 661289, 3971250; 661244, 3971270; 661211, 3971300; 661158, 3971330; 661095, 3971380; 661042, 3971460; 661026, 3971470; 661019, 3971490.

(iii) Map 2 follows.



BILLING CODE 4310–55–C

(7) *Camp Roberts Unit:*

(i) *Chlorogalum purpureum* var. *purpureum*. San Luis Obispo County, California. From USGS 1:24,000 quadrangle map Bradley. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 698578, 3961870; 698597, 3961870; 698803, 3961890; 698938, 3961980; 699082, 3962110; 699085, 3961960; 699071, 3961830; 698992, 3961710; 698954, 3961600; 698943, 3961500; 698945, 3961310; 698840, 3961170; 698739, 3961090; 698496, 3961000; 698381, 3960980; 698287, 3960880; 698229, 3960720; 698211, 3960420; 698165, 3960270; 698080, 3960100; 697976, 3959940; 697789, 3959700; 697632, 3959600; 697553, 3959530; 697462, 3959380; 697395, 3959270; 697310, 3959170; 697180, 3959020; 697132, 3958980; 697076, 3958960; 697034, 3958950; 696952, 3958950; 696778, 3958950; 696727, 3958940; 696647, 3958890; 696528, 3958860; 696481, 3958850; 696417, 3958800; 696367, 3958770; 696306, 3958750; 696155, 3958740; 696030, 3958740; 695945, 3958740; 695909, 3958750; 695871, 3958770; 695738, 3958890; 695699, 3958920; 695630, 3958990; 695579, 3959070; 695493, 3959220; 695333, 3959450; 695283, 3959520; 695228, 3959560; 695093, 3959680; 695018, 3959760; 694961, 3959840; 694886, 3959990; 694870, 3960030; 694857, 3960110; 694835, 3960180; 694840, 3960220; 694824, 3960290; 694815, 3960340;

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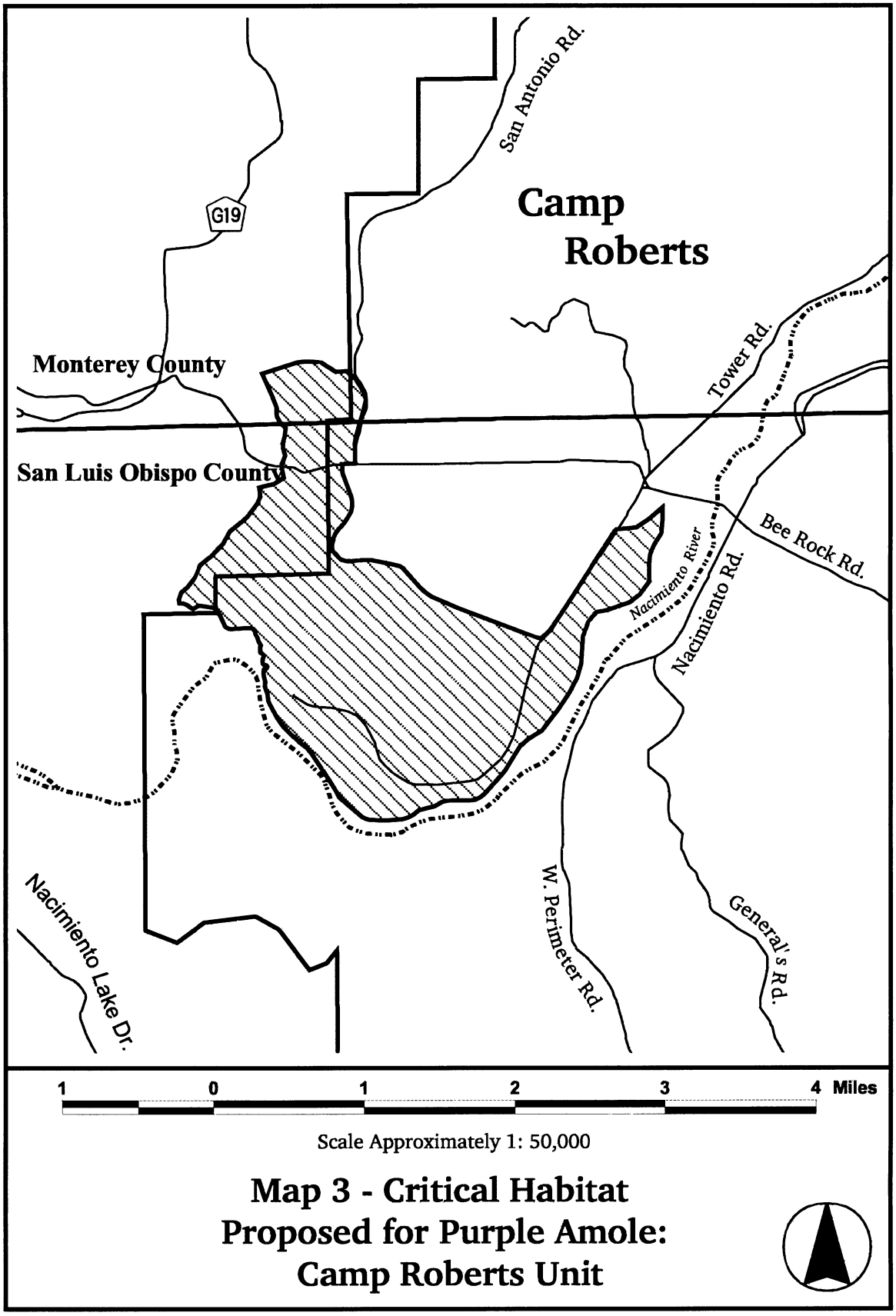
(ii) Map 3 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) *Camatta Canyon Unit*:

(1) *Chlorogalum purpureum* var. *reductum*. San Luis Obispo County, California. From USGS 1:24,000 quadrangle maps Camatta Ranch, La Panza Ranch, and Pozo Summit. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 747772, 3918070; 747772, 3918050; 747772, 3918040; 747772, 3918020; 747771, 3918010; 747771, 3918000; 747770, 3917980; 747769, 3917970; 747767, 3917950; 747766, 3917940; 747764, 3917930; 747762, 3917910; 747759, 3917900; 747757, 3917890; 747754, 3917870; 747751, 3917860; 747747, 3917840; 747744, 3917830; 747740, 3917820; 747736, 3917800; 747732, 3917790; 747727, 3917780; 747723, 3917760; 747718, 3917750; 747712, 3917740; 747707, 3917730; 747701, 3917710; 747696, 3917700; 747689, 3917690; 747683, 3917680; 747677, 3917660; 747670, 3917650; 747663, 3917640; 747656, 3917630; 747649, 3917610; 747641, 3917600; 747633, 3917590; 747625, 3917580; 747617, 3917570; 747609, 3917560; 747600, 3917550; 747591, 3917540; 747582, 3917520; 747573, 3917510; 747564, 3917500; 747555, 3917490; 747545, 3917480; 747535, 3917470; 747525, 3917460; 747515, 3917450; 747505, 3917450; 747494, 3917440; 747483, 3917430; 747473, 3917420; 747462, 3917410; 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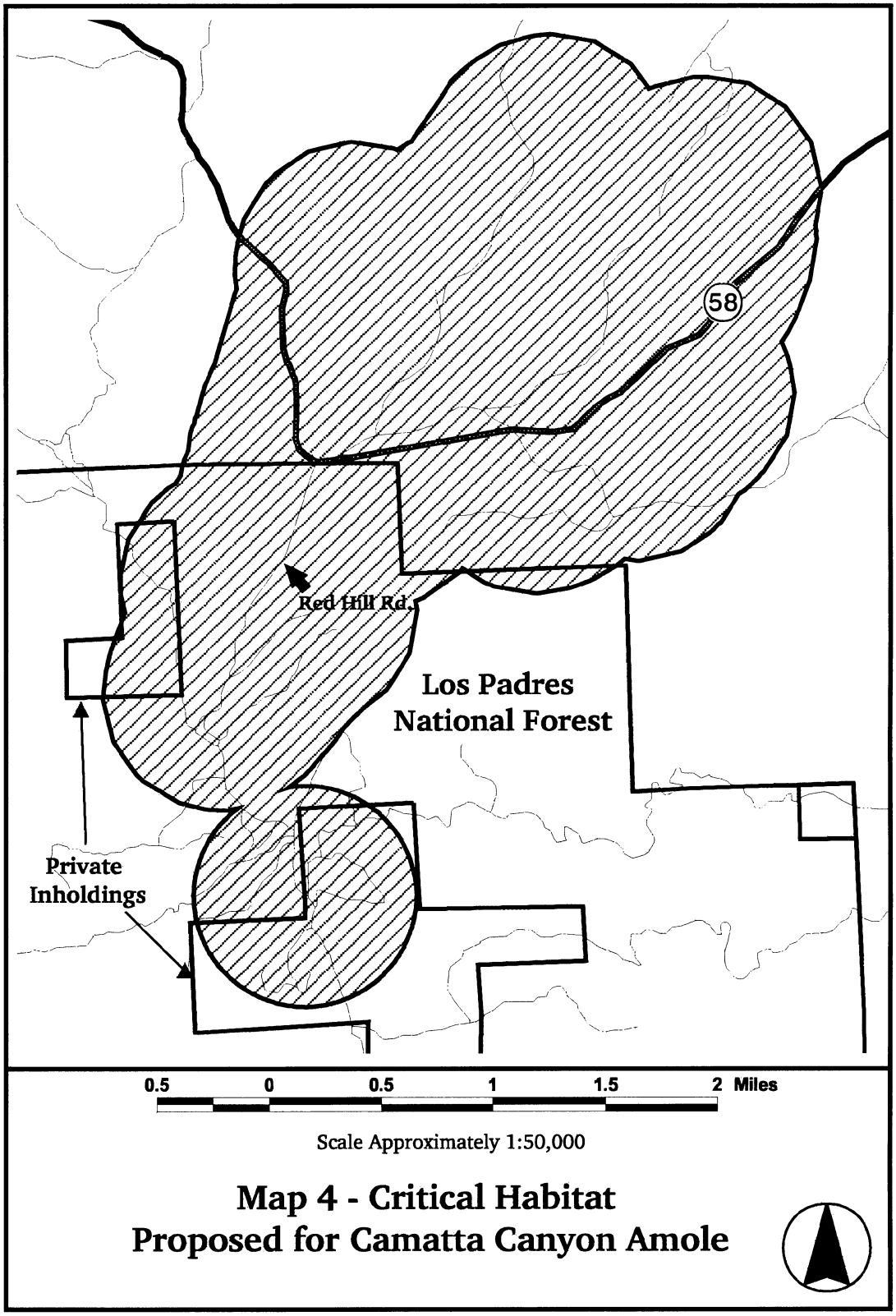
(ii) Map 4 follows.

BILLING CODE 4310–55–P



Dated: November 2, 2001.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28042 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 66, No. 217
Thursday, November 8, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–077–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request reinstatement of an information collection to allow nongovernment facilities to become accredited to perform services that could be used as the basis for export certification of plants or plant products.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked by January 7, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–077–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–077–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the accreditation program, contact Mr. Michael Ward, Program Manager, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–5227. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Accreditation of Non-Government Facilities.

OMB Number: 0579–0130.

Type of Request: Reinstatement of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the regulations that carry out the intent of this Act.

In performing this mission, APHIS provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests.

The export certification regulations, which are contained in 7 CFR part 353, describe the procedures for obtaining certification for plants and plant products offered for export or reexport. Our regulations do not require that we engage in export certification activities; however, we perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

After assessing the condition of the plants or plant products intended for export (i.e., after conducting a phytosanitary inspection), an inspector will issue an internationally recognized phytosanitary certificate, a phytosanitary certificate for reexport, or an export certificate for processed plant products. Laboratory testing of plant or plant product samples is an important component of the certification process.

The regulations in 7 CFR part 353 allow nongovernment facilities (such as commercial laboratories and private inspection services) to be accredited by APHIS to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products.

The accreditation process requires the use of several information collection activities to ensure that nongovernment facilities applying for accreditation possess the necessary qualification. We are asking approval from the Office or Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 3.39080 hours per response.

Respondents: U.S. growers, shippers, and exporters; State and plant health protection authorities.

Estimated number of respondents: 87.

Estimated number of responses per respondent: 1.

Estimated annual number of responses: 87.

Estimated total annual burden on respondents: 295 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November, 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–28066 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–083–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection, the Environmental Monitoring Form.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked by January 7, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–083–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–083–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the Environmental Monitoring Form, contact Mr. Ronald Berger, Environmental Monitoring Team Leader, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 734–5105. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Environmental Monitoring Form.

OMB Number: 0579–0117.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) provides leadership in ensuring the health and care of animals and plants. The Agency attempts to carry out this mission in a manner that promotes and protects the environment.

In accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the regulations that implement this act (contained in 40 CFR 1500–1508), APHIS engages in environmental monitoring for certain activities that we conduct to control or eradicate certain pests and diseases. We monitor those activities that have the greatest potential for harm to the human environment to ensure that the mitigation measures developed to avoid that harm are enforced and effective. In many cases, monitoring is required where APHIS programs are conducted close to habitats of endangered and threatened species. This monitoring is developed in coordination with the United States Department of the Interior, Fish and Wildlife Service, in compliance with the Endangered Species Act (16 U.S.C. 1531–1544).

APHIS field personnel and State Cooperators jointly use APHIS Form 2060, Environmental Monitoring Form, to collect information concerning the effects of pesticide use in these sensitive habitats. The goal of environmental monitoring is to track the potential impact that APHIS activities may have on the environment and to use this knowledge in making any necessary adjustments in future program actions.

We are asking the Office of Management and Budget (OMB) to approve our use of APHIS Form 2060 for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Growers/appliers of pesticides, State Department of Agriculture personnel.

Estimated number of respondents: 150.

Estimated number of responses per respondent: 20.

Estimated annual number of responses: 3,000.

Estimated total annual burden on respondents: 1,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–28067 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–026R]

Residue Policy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the **Federal Register** publication ''Residue Policy''

notice for an additional 30 days. This action responds to a request to allow additional time for comments.

DATES: Comments must be received on or before December 10, 2001.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Room, DOCKET # 00–026R, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. FSIS has made a technical paper available in the FSIS Docket Room and on the FSIS homepage (*www.fsis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Daniel L. Lazenby, Acting Director, Technical Analysis Staff, Office Policy, Program Development and Evaluation; (202) 205–0210.

SUPPLEMENTARY INFORMATION: On August 6, 2001, The Food Safety and Inspection Service (FSIS) announced its intention to harmonize its procedures with those of the Food and Drug Administration (FDA) with respect to the target tissue/marker residue policy in testing animal tissues for residues of new animal drugs (66 FR 40964).

FSIS has reviewed its approach regarding the disposition of carcasses containing residues and has determined that its approach is not consistent with FDA's approach. To ensure that meat containing unsafe levels of chemical residues is not being released into commerce, FSIS intends to modify its approach to testing and disposition of carcasses for violative residues to be more consistent with FDA's target tissue/marker residue policy.

In the August 6, 2001, **Federal Register** notice, FSIS provided 30 days for comments and stated that it would review the comments and address them in another notice. FSIS has received requests to extend the comment period for 60 days to provide commenters additional time to consider the announced changes. FSIS has considered the request and will re-open the comment. However, FSIS is only re-opening the comment period for an additional 30 days from the publication of this notice. After additional comments are received, FSIS will review them and address them in the future notice that will announce FSIS' intentions.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on November 5, 2001.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 01–28064 Filed 11–7–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.), Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the American Indian and Alaska Native Populations. Two seats on this committee currently are vacant. The Census Bureau will consider nominations received in response to this *Request for Nominations,* as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations December 10, 2001.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Census Advisory Committees and Special Populations Liaison Office, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233, telephone (301) 457–2070. Nominations also may be submitted by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Liaison Office, at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between American Indian and Alaska Native communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for American Indian and Alaska Native populations and on ways data can be disseminated for maximum usefulness to American Indian and Alaska Native populations.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, tribal diversity, expertise, and knowledge of census

procedures and activities. The Committee aims to include members from diverse backgrounds, including state, local, and tribal governments; academia; media; research and community-based organizations; and the private sector. No employee of the federal government can serve as a member of the Committee. Satisfactory meeting attendance and participation in the activities of the Advisory Committee are important criteria for Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Bureau Director or a designated federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their American Indian and Alaska Native communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate American Indian and Alaska Native populations and obtain complete and accurate data on these populations. Individuals or groups may submit nominations. A summary of the candidate's qualifications should be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include review of materials and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: November 2, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–28020 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members to Serve on the Census Advisory Committee on the Asian Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.), Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) invites and requests nominations of individuals to the Census Advisory Committee on the Asian Population. The Census Bureau will consider nominations received in response to this *Request for Nominations,* as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations December 10, 2001.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Census Advisory Committees and Special Populations Liaison Office, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233, telephone (301) 457–2070. Nominations also may be submitted by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Liaison Office, at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the population and on ways data can be disseminated for maximum usefulness to the Asian population.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state, local, and tribal governments; academia; media; research and community-based organizations; and the private sector. No employee of the federal government can serve as a member of the Committee. Satisfactory meeting attendance and participation in the activities of the Advisory Committee are important criteria for Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Bureau Director or a designated federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of Asian communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate Asians and obtain complete and accurate data on this population. Individuals or groups may submit nominations. A summary of the candidate's qualifications should be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may

include review of materials and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: November 2, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–28021 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.), Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the Hispanic Population. The Census Bureau will consider nominations received in response to this *Request for Nominations,* as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations December 10, 2001.

ADDRESSES: Please submit nominations to: Ms. Jeri Green, Census Advisory Committees and Special Populations Liaison Office, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233, telephone (301) 457–2070. Nominations may also be submitted by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Liaison Office, at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Hispanic communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Hispanic population and on ways data can be disseminated for maximum usefulness to the Hispanic population.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member committee for a period of three years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, ethnicity, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state, local, and tribal governments; academia; media; research and community-based organizations; and the private sector. No employee of the federal government can serve as a member of the Committee. Satisfactory meeting attendance and participation in the activities of the Advisory Committee are important criteria for Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Bureau Director or a designated federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of Hispanic communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate Hispanic communities and obtain complete and accurate data on this population. Individuals or groups may submit nominations. A summary of the candidate's qualifications should be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include review of materials and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: November 2, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–28022 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping review.

SUMMARY: The Department of Commerce (the Department) has received a request from North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme) and Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang) to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Holly Hawkins or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482–0414 or (202) 482–3782, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On September 15, 1997, the Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997). On September 18, 2001 and September 26, 2001, the Department received timely requests, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for new shipper reviews of this antidumping duty order which has a September anniversary date. The period of review (POR) is September 1, 2000 through August 31, 2001.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 18, 2001 request for review, North Supreme certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), North Supreme further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 26, 2001 request for review, Shouzhou Huaxiang certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shouzhou Huaxiang further certified that its export activities are not controlled by the central government of the PRC. All of the above requests also included all documentation required under 19 CFR 351.214(b)(2)(iv).

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating new-shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC.

In accordance with 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the POR for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the annual anniversary month. Therefore, the POR for these new shipper reviews is:

Antidumping duty proceeding	Period to be reviewed
Fresh Water Crawfish Tail Meat from the PRC, A–570–848:	
North Supreme Seafood (Zhejiang) Co., Ltd	09/01/00–08/31/01
Shouzhou Huaxiang Foodstuffs Co., Ltd	09/01/00–08/31/01

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: November 1, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, For Import Administration.

[FR Doc. 01–28092 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany; Antidumping Duty Administrative Review; Extension of Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the 1999–2000 administrative review of the antidumping duty order (A–428–825) on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 13, 2001, we published the preliminary results of this administrative review. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review* 66 FR 42509 (August 13, 2001). Currently, the final results in this administrative review are due on December 11, 2001. Petitioners' and respondent's case and rebuttal briefs raise complicated issues, such as major inputs from affiliated and unaffiliated suppliers; therefore, it is not practicable to complete this review within the normal statutory time limit. The Department is extending the time limits for completion of the final results until February 9, 2002 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: October 30, 2001.

Edward Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–28091 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–604]

Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decisions and amended final results of antidumping duty administrative reviews.

SUMMARY: Since the publication of the October 6, 1987, antidumping duty order on tapered roller bearings (TRBs), finished and unfinished, and parts thereof, from Japan (52 FR 37352), the Department of Commerce (the Department) has published the following final results of administrative reviews of the TRBs order:

Date of publication	Periods reviewed
August 21, 1991	1987–1988
February 11, 1992	1988–1989
February 11, 1992	1989–1990
March 16, 1992	1989–1990 (amended)
December 9, 1993	1990–1992
January 18, 1994	1990–1992 (amended)
November 7, 1996	1992–1993 (all companies reviewed but Koyo Seiko Co., Ltd. (Koyo))
March 13, 1997	1994–1995
January 15, 1998	1995–1996
March 19, 1998	1995–1996 (amended)
April 27, 1998	1993–1994 (and 1992–1993 for Koyo)
November 17, 1998 ..	1996–1997
March 6, 2000	1997–1998
March 15, 2001	1998–1999

Subsequent to our publication of each of the above final results of administrative reviews, parties to the proceedings challenged certain aspects of our final results before the Court of International Trade (the Court) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (the Federal Circuit).

With respect to the final results covering the 1992–1993 (Koyo only), 1993–1994, 1995–1996, 1996–1997, 1997–1998, and 1998–1999 review periods, the Court has not yet issued final and conclusive decisions. Therefore, we are unable at this time to publish amended final results for these periods or instruct Customs to liquidate entries of subject merchandise made by certain manufacturers/exporters during these periods.

The Court, however, has issued a final and conclusive decision regarding the Department's 1995 forgings scope determination. The Court's decision affects the liquidation of any suspended entries of TRBs and forgings, manufactured by Koyo and entered on or after October 1, 1990. *See Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan,* 60 FR 6519 (February 2, 1995) (*Final Scope Determination*); see also the Department's ''Final Results of Redetermination Pursuant to Court Remand,'' November 25, 1996, in *Timken Co.* v. *United States,* Slip Op. 96–149 (August 28, 1996). As there is now a final and conclusive court decision with respect to the forgings scope litigation, we are amending our final results of review for certain periods and will subsequently instruct Customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1998, the Department published a *Notice of Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews* (*Amended Final Results*) for certain administrative review periods between 1979 and 1992 (63 FR 17815). In the *Amended Final Results,* the Department noted that, although there were final and conclusive court decisions with respect to litigation regarding A–588–604 administrative review periods 1987–1988, 1988–1989, 1989–1990, and 1990–1992, we could not amend the final results of review for Koyo at that time due to pending forgings scope litigation at the Court. The Department indicated that, upon completion of this litigation, it would publish the amended final results of these review periods.

On July 28, 1998, the forgings scope litigation was completed when the Federal Circuit issued its decision in *Koyo Seiko Co., Ltd.* v. *United States,* No. 98–1050, –1051 (Fed. Cir. July 28, 1998). As there is now a final and conclusive court decision, we are amending our final results of review for Koyo for the above-referenced review periods.

Below is a summary of the litigation for each of Koyo's final results for which the Court has issued final and conclusive decisions. The summary highlights those court decisions which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin. It is important to note that, because litigation for each TRBs final results was unconsolidated, the Court often issued two or more orders throughout the course of litigation for a given final results which required us to recalculate Koyo's final results margin several times. To ensure the accurate calculation of amended final results, any recalculation we performed for Koyo pursuant to a specific order reflected all recalculations we performed pursuant to earlier orders. As a result, our recalculation pursuant to the last order requiring a recalculation of Koyo's final results margin reflects the final amended margin for Koyo, provided that final and conclusive decisions have been made by the Court with respect to each segment of litigation which impacted Koyo's final results.

The 1987–1988 Review Period

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

- *Koyo* v. *U.S.,* Slip Op. 93–185 (September 21, 1993).
- *Koyo* v. *U.S.,* Slip Op. 93–241 (December 21, 1993) affirmed/dismissed, Slip Op. 94–57 (April 5, 1993).
- *Koyo* v. *U.S.,* Federal Circuit Appeal No. 94–1363 (September 20, 1995 decision and November 14, 1995 mandate) (The Federal Circuit overturned the Court's order in Slip Op. 93–185 and ordered the Department to remove the 10-percent cap from the Department's sum-of-the-deviations, model-match methodology).
- *Koyo* v. *U.S.,* Slip Op. 95–193 (November 22, 1995) (The Court's remand in light of the Federal Circuit's September 20th decision and November 14th mandate) affirmed/dismissed, Slip Op. 96–92 (June 12, 1996).

As there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1987–1988 final results for the

A–588–604 order, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd.* v. *U.S.,* Slip Op. 95–193 (November 22, 1995)). Because the margin we calculated for Koyo pursuant to this court order reflected previous recalculations of Koyo's rate we made pursuant to earlier court orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 95–193 (36.29%). We will subsequently issue instructions to Customs to liquidate entries subject to the A–588–604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

The 1988–1989 Review Period

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

• *Koyo* v. *U.S.,* Slip Op. 94–123 (July 29, 1994) affirmed/dismissed, Slip Op. 95–19 (February 10, 1995).

• *Koyo* v. *U.S.,* Federal Circuit No. 95–1300,–1341 (March 19, 1996 decision and March 20, 1996 mandate) (The Federal Circuit overturned the Court's order in Slip Op. 94–123 and ordered the Department to remove the 10-percent cap to the Department's sum-of-the-deviations, model-match methodology).

• *Koyo* v. *U.S.,* Slip Op. 96–91 (The Court's remand to the Department in light of the Federal Circuit's March 19th decision and March 20th mandate) affirmed/dismissed, Slip Op. 96–144 (August 23, 1996).

As there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1988–1989 final results for the A–588–604 order, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd.* v. *U.S.,* Slip Op. 96–91 (June 12, 1996)). Because the margin we calculated for Koyo pursuant to Slip Op. 96–91 reflected previous recalculations of Koyo's rate we made pursuant to earlier orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 96–91 (24.88%). We will subsequently issue instructions to Customs to liquidate entries subject to the A–588–604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

The 1989–1990 Review Period

The decisions issued by the Court with respect to Koyo's final results which were were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

• *Koyo* v. *U.S.,* Slip Op. 94–119 (July 21, 1994) affirmed/dismissed, Slip Op. 95–18 (February 10, 1995).

• *Timken* v. *U.S.,* Slip Op. 94–141 (September 14, 1994) affirmed/dismissed, Slip Op. 95–26 (February 10, 1995).

• *Timken* v. *U.S.,* Federal Circuit No. 95–1305 (February 29, 1996 decision and mandate) (The Federal Circuit ordered the Department to recalculate Koyo's final results margin using a tax-neutral VAT calculation methodology).

• *Timken* v. *U.S.,* Slip Op 96–70 (April 19, 1996) (The Court's order in light of the Federal Circuit's February 29, 1996 decision and mandate) affirmed /dismissed, Slip Op. 96–116 (July 25, 1996).

• *Koyo* v. *U.S.,* Federal Circuit No. 95–1294, –1303 (March 20, 1996 decision and mandate) (The Federal Circuit overturned the Court's order in Slip Op. 94–119 and ordered the removal of the 10-percent cap from the Department's sum-of-the-deviations, model-match methodology. The Federal Circuit also upheld the Court's determination in Slip Op. 94–119 concerning Koyo's U.S. discounts and dismissed the 95–1303 appeal).

• *Koyo* v. *U.S.,* Slip Op. 96–94 (June 12, 1996) (The Court's remand in light of the Federal Circuit's March 20, 1996 decision and mandate) affirmed/dismissed, Slip Op. 96–143 (August 23, 1996).

As there are now final and conclusive court decisions with respect to both Court No. 92–03–00161 (*Timken*) and Court No. 92–03–00156 (*Koyo*) litigations, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd.* v. *U.S.*, Slip Op. 96–94 (June 12, 1996)). Because the margin we calculated for Koyo pursuant to Slip Op. 96–94 reflected previous recalculations of Koyo's rate we made pursuant to earlier orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 96–94 (30.08%). We will subsequently issue instructions to Customs to liquidate entries subject to the A–588–604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

The 1990–1992 Review Periods

The decisions issued by the Court with respect to Koyo's final results which were were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

• *Koyo* v. *U.S.*, Slip Op. 96–101 (June 19, 1996) affirmed/dismissed, Slip Op. 96–173 (October 25, 1996).

• *Timken* v. *U.S.*, Slip Op. 96–86 (May 31, 1996) affirmed/dismissed, Slip Op. 97–87 (July 3, 1997).

As there are now final and conclusive court decisions for both Court No. 94–01–00008 (*Timken*) and Court No. 93–12–00795 (*Koyo*) litigations affecting Koyo's final results, we are amending our final results of review for Koyo based on that which we calculated pursuant to *Timken* v. *U.S.*, Court No. 94–01–00008, Slip Op. 96–86, May 31, 1996. Because the margin we calculated for Koyo pursuant to Slip Op. 96–86 reflected all prior recalculations made to Koyo's margin pursuant to earlier orders, the amended final results margin for Koyo for the 1990–1991 and 1991–1992 periods for merchandise subject to the A–588–604 order is that which we calculated pursuant to Slip Op. 96–86 (17.36% for 1990–1991 and 24.87% for 1991–1992).

Prior to the spring of 1993, Customs classified rough forgings manufactured by Koyo under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.19.00, which described merchandise falling outside the scope of the TRBs antidumping duty order. Because the rough forgings were not classified under the scope of the order, Customs did not suspend liquidation of forgings entries under the antidumping duty order. During the spring of 1993, after determining that forgings were misclassified under HTSUS subheading 7326.19.00, Customs began classifying the merchandise under HTSUS subheadings 8484.99.10 or 8482.99.30. Customs also began to suspend the liquidation of Koyo's rough forgings entries pursuant to the antidumping duty order after the reclassification.

In response to Customs' reclassification and subsequent suspension of liquidation of rough forgings entries during the spring of 1993, Koyo submitted a request for a scope inquiry to the Department on September 17, 1993. The Department initiated the scope inquiry on September 28, 1993, and, as stated in the Summary section of this notice, published its *Final Scope Determination* on February 2, 1995. Parties to the proceeding challenged the Department's

final affirmative scope determination; in response, the Court issued a final and conclusive court decision with respect to the rough forgings scope litigation.

The Court determined that the Department should liquidate entries of rough forgings suspended since the publication of the A–588–604 antidumping duty order in 1987 without re-opening or re-reviewing any closed segment of the proceeding. The Department considers as open any segments of an antidumping proceeding which were ongoing at the time the scope issue was first raised before the Department with respect to forgings (*i.e.*, as of Koyo's September 17, 1993 request for a scope inquiry). This decision thus requires liquidation under the TRBs order of all rough forgings entries suspended during any administrative review period open at the time the Department received the scope inquiry. Because the final results of the 1990–1992 reviews were not published until December 9, 1993 (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720), which was after the date on which Koyo filed its scope inquiry, the Department will liquidate all entries of rough forgings suspended during the 1990–1992 review periods under the TRBs antidumping duty order. Therefore, we will issue instructions to Customs to liquidate all suspended entries of TRBs and forgings subject to the A–588–604 order manufactured by Koyo during these periods pursuant to these amended final results.

Amendment To Final Determinations

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative reviews of the antidumping duty order on TRBs from Japan (A–588–604) for Koyo. The weighted-average margins are as follows:

Period	Final results margin (percent)
3/27/87–9/30/88	36.29
10/1/88–9/30/89	24.88
10/1/89–9/30/90	30.08
10/1/90–9/30/91	17.36
10/1/91–9/30/92	24.87

Appraisement Methodology

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise manufactured/entered by Koyo covered by the reviews of the periods listed above. The Department will instruct Customs to liquidate TRBs manufactured by Koyo and entered into United States during the first three administrative review periods (1987–1988, 1988–1989, and 1989–1990) using the above-referenced weighted-average margins. As a result of the Court's decision with regard to the rough forgings scope litigation, the Department will instruct Customs to liquidate all suspended entries of TRBs and rough forgings manufactured by Koyo and entered into the United States between October 1, 1990 and September 30, 1992 using importer-specific assessment rates. The Department will issue appraisement instructions directly to Customs.

Dated: October 15, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–28093 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Initiation of Joint Review of Management Plans/Regulations for the Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries; Intent To Prepare Draft Environmental Impact Statements and Management Plans; Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Initiation of joint review of management plans/regulations; intent to prepare environmental impact statements; scoping meetings.

SUMMARY: Cordell Bank National Marine Sanctuary (CBNMS) was designated in 1989 and encompasses 526 square miles of open ocean off Point Reyes, California. Cordell Bank is a submerged island that reaches within 120 feet of the ocean surface. The upwelling of nutrient rich ocean waters and the bank's topography create one of the most biologically productive areas in North America. The present management plan was completed in 1989.

Gulf of the Farallones National Marine Sanctuary (GFNMS) is located along the California coast west of the San Francisco Bay area. It was designated in 1981 and encompasses 1,255 square miles. The Gulf of the Farallones is rich in marine resources, including spawning grounds and nursery areas for commercially valuable species, at least 36 species of marine mammals, and 15 species of breeding seabirds. The present management plan was completed in 1987.

Monterey Bay National Marine Sanctuary (MBNMS) stretches along 276 miles of the central California coast and encompasses 5,328 square miles of coastal and ocean waters. It was designated in 1992 and contains many diverse biological communities, including sandy bottom and rocky outcrop habitats, the nation's largest expanse of kelp forests, one of the deepest underwater canyons in North America, and a vast open ocean habitat. The present management plan was completed in 1992.

The National Marine Sanctuary Program (NMSP) is jointly reviewing the management plans for all three sanctuaries. These sanctuaries are located adjacent to one another, managed by the same program, and share many of the same resources and issues. In addition, all three sites share many overlapping interest and user groups. It is also more cost-effective for the program to review the three sites jointly rather than conducting three independent reviews.

In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plans, to evaluate substantive progress toward implementing the goals for the Sanctuaries, and to make revisions to the plans and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plans will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuaries resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA

anticipates completion of the revised management plans and concomitant documents will require approximately eighteen to twenty-four months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuaries management plans and regulations. The scoping meetings are scheduled starting on November 28, and are detailed below.

DATES: Written comments should be received on or before January 31, 2002.

Scoping meetings will be held at:

(1) Wednesday, November 28, 2001, 1 P.M. and 6:30 P.M. in Santa Cruz*, CA.

(2) Thursday, November 29, 2001, 1 P.M. and 6:30 P.M. in Monterey*, CA.

(3) Saturday, December 1, 2001, 1 PM in Salinas*, CA.

(4) Monday, December 3, 2001, 6:30 P.M. in San Luis Obispo, CA.

(5) Tuesday, December 4, 2001, 6:30 P.M. in Cambria, CA.

(6) Wednesday, December 5, 2001, 6:30 P.M. in Big Sur, CA.

(7) Thursday, December 6, 2001, 6:30 P.M. in Half Moon Bay, CA.

(8) Friday, December 7, 2001, 8:30 A.M. in Half Moon Bay, CA.

(9) Tuesday, December 11, 2001, 10 A.M.—2 P.M. in Sacramento, CA.

(10) Friday, December 14, 2001, 10 A.M.—12:30 P.M. in Washington, DC.

(11) Monday, January 7, 2002, 6:30 P.M. in Gualala, CA.

(12) Tuesday, January 8, 2002, 6:30 P.M. in Bodega Bay, CA.

(13) Wednesday, January 9, 2002, 7:30 P.M. in Pt. Reyes Station, CA.

(14) Thursday, January 10, 2002, 6:30 P.M. in San Rafael, CA.

(15) Monday, January 14, 2002, 6:30 P.M. in Rohnert Park, CA.

(16) Tuesday, January 15, 2002, 6:30 P.M. in San Francisco, CA.

(17) Wednesday, January 16, 2002, 6:30 P.M. in Pacifica, CA.

(18) Thursday, January 17, 2002, 6:30 P.M. in San Jose*, CA.

* Spanish Translation Available

ADDRESSES: Written comments may be sent to either of the following addresses:

Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, Anne Walton, Management Plan Coordinator, Fort Mason, Building 201, San Francisco, CA 94123, (415) 561–6622 phone, (415) 561–6616 fax, *Anne.Walton@noaa.gov.*

Monterey Bay National Marine Sanctuary, Sean Morton, Management Plan Coordinator, 299 Foam Street, Monterey, CA 93940, (831) 647–4217 phone, (831) 647–4250 fax, *Sean.Morton@noaa.gov.*

Comments will be available for public review at the same addresses. Comments may also be submitted on the Joint Management Plan Website at *http://sanctuaries.nos.noaa.gov/jointplan* or via e-mail at *jointplancomments@noaa.gov.*

Scoping meetings will be held at:

(1) Santa Cruz Civic Center, 307 Church Street, Santa Cruz, CA, 95060.

(2) Monterey Conference Center, One Portola Plaza, Monterey, CA, 93940.

(3) Hartnell College, 156 Homestead Avenue, Salinas, CA, 93901.

(4) San Luis Obispo Public Library, 995 Palm Street, San Luis Obispo, CA, 93401.

(5) Cambria Grammer School, 1350 Main Street, Cambria, CA, 93428.

(6) Big Sur Lodge at Pfeiffer Big Sur State Park, 47225 Pacific Coast Highway One, Big Sur, CA, 93920.

(7) Ted Adcock Community Center, 535 Kelly Avenue, Half Moon Bay, CA, 94019.

(8) Douglas Beach House, 311 Mirada Road, Half Moon Bay, CA, 94019.

(9) Sheraton Grand Sacramento, Compagno Room, 1230 J Street, Sacramento, CA, 95814.

(10) U.S. Department of Commerce, Herbert C. Hoover Bldg., Rooms 6800 & 6802, 14th Street and Constitution Ave. NW, Washington, DC, 20230.

(11) Gualala Arts Center, 46501 Old State Highway, Gualala, CA, 95445.

(12) Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA, 94923.

(13) Point Reyes Dance Palace, Main Hall, 5th and B Street, Pt. Reyes Station, CA, 94956.

(14) Marin Center, Hospitality Room and Six Meeting Rooms, Avenue of the Flags, North San Pedro Road, San Rafael, CA, 94903.

(15) Doubletree Hotel, Rohnert Park, Salons 3 & 4, One Doubletree Drive, Rohnert Park, CA, 94928.

(16) Marina Middle School, 3500 Fillmore Street, San Francisco, CA, 94123.

(17) Oceana High School, 401 Paloma Avenue, Pacifica, CA, 94044.

(18) Santa Clara County Office of Education, 1290 Ridder Park Drive, San Jose, CA, 95131.

FOR FURTHER INFORMATION CONTACT: Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, Anne Walton, Management Plan Coordinator, Fort Mason, Building 201, San Francisco, CA 94123, (415) 561–6622, *Anne.Walton@noaa.gov.*

-or-

Monterey Bay National Marine Sanctuary, Sean Morton, Management Plan Coordinator, 299 Foam Street, Monterey, CA 93940, (831) 647–4217, *Sean.Morton@noaa.gov.*

Information about the Joint Management Plan Review can also be found on the Internet at: *http://sanctuaries.nos.noaa.gov/jointplan.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Authority: 16 U.S.C. section 1431 *et seq.*

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–28054 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 352/652 and 369–S are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also

see 65 FR 69910, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 8, 2001, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
352/652	14,218,844 dozen.
369–S [2]	2,381,264 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–28094 Filed 11–7–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 16, 2001. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before January 7, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: November 2, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities.

Abstract: The data collection proposed under this request is included in proposed regulations that would implement section 673(h) of the Individuals with Disabilities Education Act (IDEA). It requires that individuals who receive a scholarship through personnel preparation projects funded under the Act to subsequently provide special education and related services to children with disabilities (or, for leadership personnel, work in areas related to their preparation) for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy their service obligation must repay all or part of the cost of their assistance in accordance with regulations issued by the Secretary. These proposed regulations would implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment (or ''payback'') of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations. In order for the Federal government to justify the expenditure of public funds under this program, certain data collections, record keeping, and documentation are necessary to ensure that goals of the program are achieved.

Additional Information: This program is a high priority and a key strategy to increase the quantity and improve the quality of special education personnel.

Frequency: On Occasion; Annually.

Affected Public: Not-for-profit institutions; Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 285.

Burden Hours: 142,500.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO.RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28017 Filed 11–7–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 7, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan (Direct Loan) Program Electronic Debit Account Application and Brochure.

Frequency: One time.

Affected Public: Individuals or households; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 210,000.

Burden Hours: 6993.

Abstract: A Direct Loan borrower uses this application to request and authorize the automatic deduction of monthly student loan payments from his or her checking or savings account.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28018 Filed 11–7–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 10, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Cristal Thomas, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *CAThomas@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 2, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Interim Performance Report for 1st Year Title V Grantees and Interim Performance Report for Title V Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 150. Burden Hours: 900.

Abstract: Title V of the Higher Education Act (HEA), provides a discretionary grant program that makes competitive awards to Hispanic-Serving Institutions to assist these institutions of

higher education to expand their capacity to serve Hispanic and low-income students. Grantees annually submit a performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project. This request is to use an Interim Performance Report in conjunction with annual reports to more effectively elicit program-specific information. The Interim Performance Report will be the first of a series of Title V performance reports tailored to strengthen the Department of Education's program monitoring efforts, enhance customer service, and reduce the overall paperwork burden on grantees.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28019 Filed 11–7–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.354A]

Office of Elementary and Secondary Education; Charter Schools Facilities Financing Demonstration Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001 funds

Purpose of Program: Charter schools provide parents and students with options that can lead to better student achievement. However, many of these schools have insufficient revenue and lack access to private financing for facilities. This program will provide one-time grants to eligible entities to permit them to demonstrate innovative credit enhancement initiatives that assist charter schools in accessing private sector and other non-Federal capital to address the cost of acquiring, constructing, and renovating facilities. Grant projects awarded under this program will be of a sufficient size, scope, and quality so as to ensure an effective demonstration of the proposed strategies.

Eligible Applicants: (A) A public entity, such as a State or local governmental entity; (B) A private nonprofit entity; or (C) A consortium of entities described in (A) and (B).

Applications Available: November 8, 2001.

Deadline for Transmittal of Applications: January 4, 2002.

Deadline for Intergovernmental Review: March 6, 2002.

Estimated Available Funds: $25,000,000.

Estimated Range of Awards: $2,500,000–$10,000,000.

Estimated Average Size of Awards: $8,333,000.

Estimated Number of Awards: 3–5. The Secretary will make, if possible and appropriate, at least one award in each of the three categories of eligible applicants.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 50 double-spaced pages (not including the required forms and tables), to use a 12-point or larger size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Application Content

Each Charter Schools Facilities Financing Demonstration Program application must include the following specific program elements:

1. A statement identifying the activities proposed to be undertaken with grant funds (the ''grant project'') and the timeline for the activities, including how the applicant will determine which charter schools will receive assistance, how much and what types of assistance these schools will receive, and what procedures the applicant will use for documenting grant project procedures and results.

2. A description of the involvement of charter schools in the application's development and the design of the proposed grant project.

3. A description of the applicant's expertise in capital markets financing and organizational capacity to implement the proposed grant project successfully. (Consortium applicants must list information for each of the participating organizations.)

4. A description of how the proposed grant project will leverage the maximum amount of private sector and other non-Federal capital relative to the amount of Charter Schools Facilities Financing Demonstration Program funding used, the type of schools to be served, and the type of assistance to be provided, and how the proposed activities will otherwise enhance credit available to charter schools.

5. In the case of an application submitted by a State governmental entity, a description of current and planned State funding policy and other forms of financial assistance that will help charter schools meet their facility needs.

Use of Funds: Grant recipients must, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the grant funds received under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such account shall be used by the grantee for one or more of the following purposes to assist charter schools in accessing private sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein;

(2) Guaranteeing and insuring leases of personal and real property;

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools; and

(4) Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (such as the retention of bond counsel, underwriters, and other advisors, attracting potential investors, the procurement of bond counsel, and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Investments shall be designed to preserve principal.

Any earnings on funds received under this program shall be deposited in the reserve account and be used in accordance with the requirements of this program.

An eligible entity receiving a grant under this program shall use the funds deposited in the reserve account to assist one or more charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The burden of proof is upon the grantee, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. Each grantee must also clearly indicate with respect to each financial obligation it enters into pursuant to this grant program that the full faith and credit of the United States is *not* pledged to the payment of funds under such obligation.

Grantee Performance Agreements and Reporting Requirements

Applicants that are selected to receive an award must enter into a Performance Agreement with the Department prior to receiving their award. A key element of the Performance Agreement is the performance goals. In developing performance goals, Department staff and each applicant will rely on the applicant's annual projections submitted under the Business/Organizational Capacity section of the application and the objectives established in the approved application. The Performance Agreement will also describe the ways in which the Department and the grantee will work together to accomplish the purposes of the program.

The Secretary, in accordance with applicable authorities, shall collect all of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, if not earlier than 2 years after the date on which the entity first received these funds, the entity has failed to make substantial progress in undertaking the grant project.

During each fiscal year that the grantee's obligation to the Federal government remains in effect, grantees will submit reports (as detailed below) to the Department. The grantee's commitment continues for the duration of the Project Period.

Applicants selected for funding will be required to submit the following reports to the Department:

1. An annual report that includes:

a. a copy of the most recent financial statements and any accompanying opinion on such statements prepared by the independent public accountant reviewing the financial records of the grantee;

b. a copy of any report made on an audit of the financial records of the grantee conducted during the reporting period;

c. an evaluation by the grantee of the effectiveness of its use of the Federal funds in leveraging private sector and other non-Federal funds;

d. a description of characteristics of lenders and other financial institutions participating in activities undertaken by the grantee during the reporting period;

e. a narrative description of the grantee's activities in support of the objectives of the program and its performance goals including a listing and description of the charter schools served during the reporting period; and

f. such other information as the Secretary may require.

2. Semiannual reports that include internal financial statements and such other information as the Secretary may require in the Performance Agreement.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific grant agreement between the grantee and the Department may contain additional reporting requirements.

Grantees must maintain and enforce standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct should, at a minimum, require disclosure of direct and indirect financial or other interests, mandate disinterested decision-making, and indicate corrective actions to be taken in the event of violation.

Limitation on Administrative Costs

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

Charter Schools Eligible to Benefit From This Program

The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in the Public Charter Schools Program authorizing statute in section 10310 of the Elementary and Secondary Education Act of 1965. This definition is repeated as follows in this application notice for the convenience of the applicant.

(1) A charter school is a public school that—

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;

(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;

(J) meets all applicable Federal, State, and local health and safety requirements;

(K) operates in accordance with State law; and

(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Methods for Applying Selection Criteria

The Secretary gives distinct weight to the listed criteria and the maximum score for each criterion is indicated in parenthesis. Within each criterion, the Secretary evaluates each factor equally. The maximum score that an application may receive is 100 points. In making final funding decisions, the Secretary intends to make, if possible and appropriate, at least one award in each of the three eligible applicant categories.

In evaluating applications for grants under this program competition, the Secretary will use the following project selection criteria. The selection criteria address two important questions:

A. Does the applicant have the capacity to carry out the proposed grant project?

B. Has the applicant proposed a grant project that will make a significant contribution toward meeting the purpose of the Charter Schools Facilities Financing Demonstration Program and thereby increase charter schools' access to facilities financing?

A. The selection criteria related to the applicant's capacity to carry out the proposed grant project include:

1. *The business and organizational capacity of the applicant to carry out the grant project* (25 points).

—The amount and quality of experience the applicant has with the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

—The applicant's financial stability;

—The adequacy of the applicant's policies and procedures regarding loan underwriting, portfolio monitoring, and financial management to protect against unwarranted risk; and

—The adequacy of standards of conduct to prevent conflicts of interest.

2. *The grant project team* (20 points).

—The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including consultants or subcontractors; and

—The adequacy of the applicant's staffing plan for the grant project.

—For non-profits only, the qualifications, including relevant training and experience, of members of the board of directors holding key positions.

3. *The adequacy of resources* (5 points)

—The resources to be contributed by each co-applicant (consortium member), partner or other grant project participant to the implementation and success of the grant project; and

—The extent to which the requested grant amount is reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

—For State governmental entities, the extent to which steps have or will be taken to help charter schools within the State obtain adequate facilities.

B. The selection criteria related to the potential contribution of the proposed grant project to achieving the purpose of the Charter Schools Facilities Financing Demonstration Program include:

1. *The quality of the design and potential significance of the proposed grant project* (35 points).

—The extent to which the grant project goals and objectives are clearly specified, measurable, and appropriate for the purpose of the Charter Schools Facilities Financing Demonstration Program;

—The extent to which the grant project implementation plan and activities, including the partnerships established, are likely to achieve the objectives sought by the project.

—The extent to which the proposed grant project is likely to produce results that will be documented and helpful to others nationally in providing facilities financing assistance to charter schools;

—The extent to which the grant project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

—The importance or magnitude of the results or outcomes likely to be attained by the proposed grant project (e.g., the number and variety of charter schools assisted and the amount of capital leveraged).

2. *The quality of the services* (15 points).

—The extent to which the services to be provided by the proposed grant project are appropriate to the needs of the charter schools to be served;

—The extent to which charter schools and chartering agencies were involved in the design of and demonstrate support for the grant project;

—The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter school access to facilities financing; and

—The extent to which the services to be provided by the proposed grant project are focused on quality charter schools with the greatest needs.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). Funding for this new initiative was provided in the Department's FY 2001 appropriations act, enacted December 21, 2000. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*; or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.354A.

FOR FURTHER INFORMATION CONTACT: Jennifer Ryan McMahon, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E239, Washington, DC 20202. Telephone: (202) 260–9738 or via Internet: *Jennifer.McMahon@ed.gov.*

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Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

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The Department intends to offer further information about the program at the following Internet site: *http://www.ed.gov/offices/OESE/goals/progresp.html*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request using the contact information provided under *FOR APPLICATIONS CONTACT*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Elementary and Secondary Education Act of 1965, title X, part C, subpart 2, as amended by the Department of Education Appropriations Act, 2001, section 322.

Dated: November 5, 2001.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–28087 Filed 11–7–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

University-Industry Partnerships for Aluminum Industry of the Future Program

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications from U.S. institutions of higher learning, whether private or public, and their associated research organizations for cost shared research, which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic aluminum industry. This solicitation seeks proposals for fundamental research in support of the development and implementation of energy efficiency technologies for the aluminum industry. Applicants are encouraged to utilize the widest possible range of creative and technically feasible approaches to address research priorities identified by the aluminum industry in the Aluminum Industry Technology Roadmap and the Inert Anode Roadmap.

DATES: The deadline for receipt of applications is 5 p.m. EST on January 11, 2002.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE–PS07–02ID14270, University-Industry Partnerships for Aluminum Industry of the Future Program, through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov*.

IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS ''User Guide for Contractors'' can be obtained by going to the IIPS Homepage at the following URL: *http://e-center.doe.gov* and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Carol Van Lente, Contract Specialist, at *vanlencl@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (P.L. 93–577). Approximately $300,000 to $600,000 in federal funds is expected to be available to fund the first year of selected research efforts. DOE anticipates making approximately three to six cooperative agreement awards each with a budget of $100,000 a year or less and a project performance period of three years or less.

Signed in Washington, D.C. on November 2, 2001.

Mary Ann Masterson,

Assistant General Counsel for Procurement and Financial Assistance.

[FR Doc. 01–28069 Filed 11–7–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF01–1–000]

Dominion Transmission, Inc.; Notice of Site Visit

November 2, 2001.

On November 12 through 16, 2001, the staff of the Office of Energy Projects will conduct a pre-filing site visit of Dominion Transmission, Inc.'s (Dominion) Greenbrier Pipeline Project in Virginia and West Virginia. The project area will be inspected by automobile and on foot, as appropriate. The staff also plans to attend two Open Houses being held by Dominion on November 13 and 14 at the following locations:

November 13, 2001: Henry County Administration Building, 3300 Kings Mountain Road, Martinsville, Virginia, 540–634–4600, option 3.

November 14, 2001: Cross Roads Ruritan Club; No address or phone available. From Rocky Mount, Virginia take Route 40 west for about 15 miles and turn right onto Route 788. The entrance to Ruritan Club is on the right about 200 feet from the turn. Follow hard road about 0.5 mile to the facility.

These Open Houses will start at 6 p.m.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at (202) 208–1088.

For information concerning the Open Houses contact Sean R. Sleigh, Certificates Manager for Dominion at (800) 624–3101 or (304) 627–3462.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28031 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–626–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

November 2, 2001.

Take notice that on October 29, 2001, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1,

the following tariff sheets, with an effective date of November 1, 2001:

Substitute Tenth Revised Sheet No. 31
Substitute Thirteenth Revised Sheet No. 32
Substitute Eighth Revised Sheet No. 33
Substitute Seventh Revised Sheet No. 34

DTI states that the filing is being made to comply with the Commission's Letter Order issued on October 24, 2001, in Docket No. RP01–626–000.

DTI states that the Letter Order accepted for filing the tariff sheets filed to update DTI's Transportation Cost Rate Adjustment (TCRA) through the annual adjustment mechanism that is described in Section 15 of the General Terms and Conditions (GT&C) of Dominion's FERC-approved tariff. The Letter Order directed DTI to file revised tariff sheets to reflect the $3 million credit required under the Settlement filed in Docket No. RP00–632–000 *et al.* The purpose of this filing is to comply with the condition imposed by the Letter Order.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers, interested state commissions and on all persons on the official service list compiled by the Secretary of the Commission for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28036 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–005]

Mississippi River Transmission Corporation; Notice of Negotiated Rates

November 2, 2001.

Take notice that on October 29, 2001, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2001:

Original Sheet No. 10B
Original Sheet No. 10C

MRT states that the filing is being made to reflect the implementation of a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28034 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–061 and GT01–34–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 2, 2001.

Take notice that on October 26, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Second Revised Sheet No. 413A, with an effective date of October 1, 2001. Tennessee also filed a copy of the AES Londonderry, L.L.C. (AES) Agency Agreement.

Tennessee states that the AES Agency Agreement and Substitute Second Revised Sheet No. 413A are being filed in compliance with the Commission's October 11, 2001 Letter Order (October 11 Order) in the above-referenced proceeding. The October 11 Order found the AES Agency Agreement to be a non-conforming service agreement because it deviates in a material respect from Tennessee's *pro forma* Agency Authorization Agreement. Accordingly, Tennessee has revised Substitute Second Revised Sheet No. 413A to list the AES Agency Agreement as a non-conforming agreement. Tennessee requests that the Commission approve the AES Agency Agreement and Substitute Second Revised Sheet No. 413A effective October 1, 2001.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28032 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–062]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 2, 2001.

Take notice that on October 26, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval (1) a Gas Transportation Agreement between Tennessee and NJR Energy Services (NJRES) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) and (2) an October 18, 2001 Firm Transportation Negotiated Rate Letter Agreement entered into between Tennessee and NJRES (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and NJRES to be effective December 1, 2001.

Tennessee states that copies of the filing have been mailed to each of Tennessee's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28033 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–003, RP00–481–003, and RP00–553–006]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 2, 2001.

Take notice that on October 29, 2001, in compliance with the Commission's order issued September 27, 2001 in the referenced dockets, (September 27 Order), Transcontinental Gas Pipe Line Corporation (Transco) submitted its compliance filing to further explain certain aspects of its filings in the referenced dockets, and to submit certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, to comply with the Commission's directives in the September 27 Order. The revised tariff sheets, which are enumerated in Appendix A to the filing, are proposed to be effective as described more fully therein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28035 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–25–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 2, 2001.

Take notice that on October 25, 2001, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is October 1, 2001.

Transco states that the purpose of the instant filing is to track rate changes attributable to: (1) Storage service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS–2, (2) storage service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, (3) transportation service purchased from National Fuel under its Rate Schedule X–54, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, (4) transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and (5) storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. This filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule SS–2, Section 4 of Transco's Rate Schedule FT–NT, Section 3 of Transco's Rate Schedule GSS and Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that included in Appendices B through F attached to the filing are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS, SS–2, FT–NT and S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28037 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–2–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2001.

Take notice that on October 23, 2001, Trunkline LNG Company (TLNG) and CMS Trunkline LNG Company, LLC tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the tariff sheets listed on Appendix A to the filing, to reflect a corporate name change to become effective November 1, 2001.

TLNG states that on November 1, 2001, TLNG will convert from a corporation to a limited liability company and will change its corporate name to CMS Trunkline LNG Company, LLC.

TLNG states that copies of the filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28027 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–181–000]

Virginia Electric and Power Company; Notice of Filing

November 1, 2001.

Take notice that Virginia Electric and Power Company (the Company) on October 29, 2001, respectfully tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement by Virginia Electric and Power Company to Williams Energy Marketing & Trading Company, designated as Service Agreement No. 7, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001. Copies of the filing were served upon Williams Energy Marketing & Trading Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of October 15, 2001, as requested by the customer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 19, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28038 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–14–000, *et al.*]

Nine Mile Point Nuclear Station, LLC, *et al.;* Electric Rate and Corporate Regulation Filings

November 2, 2001.

Take notice that the following filings have been made with the Commission:

1. Nine Mile Point Nuclear Station, LLC

[Docket No. EG02–14–000]

Take notice that on October 29, 2001, Nine Mile Point Nuclear Station, LLC (Nine Mile LLC), a Delaware limited liability company with its principal place of business at 39 W. Lexington Street, Baltimore, Maryland 21201, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Copies of the Application have been served upon the New York Public Service Commission, the Maine Public Utilities Commission and the Maryland Public Service Commission.

Comment date: November 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cogentrix Energy Power Marketing, Inc.

[Docket Nos. ER95–1739–019, ER99–452–000, and ER99–411–000]

Take notice that on October 30, 2001, Cogentrix Energy Power Marketing, Inc. (CEPM) filed with the Federal Energy Regulatory Commission (Commission) its three-year updated market analysis. CEPM is a power marketer and broker, owning no generation, with its principal place of business in Charlotte, North Carolina.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Cooperative, Inc., Complainant, v. Soyland Power Cooperative, Inc., Respondent.

[Docket No. EL99–14–003]

Take notice that on October 31, 2001, Soyland Power Cooperative, Inc. tendered for filing a Refund Report in compliance with the orders issued in the above-captioned docket. *See Southwestern Electric Cooperative, Inc.* v. *Soyland Power Cooperative, Inc.,* 90 FERC ¶ 63,001 (2000), 95 FERC ¶ 61,254 (2001), 97 FERC ¶ 61,008 (2001).

Comment date: November 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER99–3288–004]

Take notice that on October 30, 2001, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–003]

Take notice that, on October 31, 2001, Conectiv, on behalf of Delmarva Power & Light Company and Conectiv Delmarva Generation, Inc., submitted its compliance filing to the Federal Energy Regulatory Commission (Commission) in the above captioned proceeding. Copies of the filing were served on the official service list in this proceeding.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. BP Energy Company

[Docket No. ER00–3614–001]

Take notice that on October 31, 2000, BP Energy Company (BP) submitted its First Revised FERC Electric Rate Schedule No. 1, proposed to become effective August 22, 2000. BP states that this filing is made in compliance with the Commission's order dated October 18, 2000 in the captioned proceeding.

Comment date: November 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Geysers Power Company, LLC

[Docket No. ER01–812–001]

Take notice that on October 30, 2001, Geysers Power Company, LLC (Geysers Power) filed its response to a request for additional information received from Federal Energy Regulatory Commission (Commission) staff in this docket. Geysers Power provides RMR services to the California Independent System Operator Corporation (CAISO) pursuant to the Geysers Main RMR Agreement accepted by the Commission in California ISO Corp., et al., 87 FERC P. 61,250 (1999). The request directed Geysers Power to submit a form of notice with its filing.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER01–1898–002]

Take notice that on October 29, 2001, Tampa Electric Company (Tampa Electric) submitted to the Federal Energy Regulatory Commission (Commission) Original Sheet Nos. 72 through 76 for inclusion in its First Revised Rate Schedule FERC No. 62, which is its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc. (collectively, Southern Companies), as reformatted in Docket No. ER01–1898–001 in accordance with the Commission's Order No. 614. Tampa Electric also submitted a sheet designated as First Revised Sheet Nos. 72 through 76 Superseding Original Sheet Nos. 72 through 76.

Tampa Electric states that the purpose of the filing is: (1) To include in the reformatted rate schedule, from its May 1, 2001 effective date through July 31, 2001, an addendum concerning sulfur dioxide emissions allowances that was overlooked in the earlier compliance filing; and (2) to cancel the sheets containing the addendum effective August 1, 2001, when the addendum becomes an independent rate schedule.

A copy of the supplemental compliance filing has been served on each person designated on the official service list in this docket, the Southern Companies, and the Florida Public Service Commission.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corporation

[Docket No. ER02–197–000]

Take notice that on October 31, 2001, American Electric Power Service Corporation (AEPSC) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for ERCOT Regional transmission Service between AEPSC and Medina Electric Cooperative Inc. (MEC), dated October 1, 2001; a notice of cancellation of a service agreement for ERCOT regional transmission service between CPL and West Texas Utilities Company collectively, and MEC, dated January 1, 1997; an amended interconnection agreement between Central Power and Light Company (CPL) and MEC, dated November 29, 1999; and a notice of cancellation of an interchange agreement among CLP, MEC and South Texas Electric Cooperative, Inc., dated February 6, 1979.

AEPCS requests an effective date of October 1, 2001 for the Service Agreement for ERCOT Regional Transmission Service and an effective date of August 30, 2000 for the amendment to Facility Schedule No. 7 of the interconnection agreement and if requests that the interchange agreement to canceled effective August 28, 2001.

AEPSC served copies of the filing on Medina Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER02–200–000]

Take notice that on October 30 , 2001, Southern California Edison Company (SCE) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Letter Agreement between SCE and Ridgewood Olinda, LLC (Ridgewood).

The Letter Agreement specifies the terms and conditions under which SCE will provide limited pre-interconnection

services including procurement, engineering, and limited construction.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Ridgewood.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Mirant Delta, LLC; Mirant Potrero, LLC

[Docket No. ER02–198–000]

Take notice that, on October 31, 2001, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain revised tariff sheets to the Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation. The revisions include, inter alia, changes to the: (i) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, (iii) Prepaid Start-up Costs, (iv) projected outage information, (v) Annual Fixed Revenue Requirements, and (vi) Variable O&M rates for the generating units owned by Mirant Delta and Mirant Potrero, for the year beginning January 1, 2002.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Exelon Generation Company, LLC

[Docket No. ER02–201–000]

Take notice that on October 29, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing with the Federal Energy Regulatory Commission (Commission) notices of cancellation of its service agreements for the purchase and sale of power and energy with Reliant Energy Services, Inc., DTE Energy Trading, Inc., and The Detroit Edison Company.

Exelon Generation proposes that the cancellations be made effective on November 16, 2001, and therefore requests waiver of the Commission's notice requirement.

Comment date: November 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Exelon Generation Company, LLC; Exelon Energy Company

[Docket No. ER02–202–000]

Take notice that on October 30, 2001, Exelon Generation Company, LLC (Exelon Generation) and Exelon Energy Company (Exelon Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Cancellation of the long-term power sales service agreement between Exelon Generation and Exelon Energy, Exelon Generation Company, LLC, FERC Electric Tariff First Revised Volume No. 1, Service Agreement No. 257, and Exelon Energy Company, FERC Electric Tariff Original Volume No. 1, Service Agreement No. 1.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. The Detroit Edison Company

[Docket No. ER02–203–000]

Take notice that on October 30, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and the following parties: Exelon Generation Company, LLC; H.Q. Energy Services, (U.S.), Inc.; and PSEG Energy Resources and Trade.

In addition, Detroit Edison tendered for filing notices of cancellation of service agreements between Detroit Edison and PECO Electric Company—Power Team, on file with FERC in Docket No. ER97–2320–000, and between Detroit Edison and Public Service Electric & Gas Company, on file with FERC in Docket No. ER98–201–000.

Comment date: November 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Exelon Generation Company, LLC

[Docket No. ER–02–204–000]

Take notice that on October 31, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing with the Federal Energy Regulatory Commission (Commission) a power sales service agreement between Exelon Generation and Constellation Power Source, Inc., under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER02–205–000]

Take notice that on October 31, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) two executed service agreements with Enserco Energy, Inc. under the terms of PNM's Open Access Transmission Tariff. One agreement is for non-firm point-to-point transmission service and one agreement is for short-term firm point-to-point transmission service. PNM requests October 16, 2001, as the effective date for the agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Enserco Energy, Inc. and to the New Mexico Public Regulation Commission.

Comment date: November 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28071 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–007, South Carolina]

South Carolina Electric and Gas Company; Notice of Availability of Draft Environmental Assessment

November 2, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No.

486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Columbia Hydroelectric Project, located on the Broad and Congaree Rivers in the City of Columbia and Richland County, South Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. There are no federal lands occupied by the project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 1895–007 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

For further information, contact Charles Hall at 202–219–2853.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28039 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Evergreen Expansion Project and Request for Comments on Environmental Issues

November 2, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Evergreen Expansion Project involving construction and operation of facilities by Northwest Pipeline Corporation (NWP) in Skagit, King, Pierce, Whatcom, Snohomish, and Lewis Counties, Washington.[1] NWP proposes to construct four, 36-inch-diameter pipeline loop segments totaling approximately 27.8 miles along with appurtenant facilities, and 67,150 ISO horsepower of additional compression at five different facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the presence of an existing pipeline easement. The majority of the existing pipeline has an associated 75-foot-wide permanent right-of-way and the majority of the new pipeline would not require an expansion of permanent right-of-way. However, in areas where NWP's existing permanent right-of-way is 60- or 40-feet wide, an additional 15- or 35-feet of easement would be sought.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice NWP provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

NWP wants to expand its existing pipeline system for the transportation of additional volumes of natural gas within the Skagit, King, Pierce, Whatcom, Snohomish, Skamania, Klickitat, and Benton Counties, Washington. Specifically, NWP seeks authority to:

1. Abandon and remove 2 existing reciprocating compressor units of 5000 horsepower (HP) each at the existing Snohomish Compressor Station;
2. Abandon and remove existing compressor unit 6,350 HP at the existing Sumner Compressor Station;
3. Construct 8.54 miles of 36-inch-diameter pipeline (Sedro-Wooley Loop);
4. Construct 8.88 miles of 36-inch-diameter pipeline (Mt. Vernon Loop);
5. Construct 6.95 miles of 36-inch-diameter pipeline (Covington Loop);
6. Construct 3.42 miles of 36-inch-diameter pipeline (Auburn Loop)
7. Construct a new 13,000 HP turbine unit and uprate 2 turbine engines from 12,600 HP to 13,000 HP each at its existing Sumas Compressor Station;
8. Construction a new 13,000 HP turbine unit and one new 4,700 HP turbine unit at its existing Mt. Vernon Compressor Station;
9. Construct 2 new 13,000 HP turbine units each at its Snohomish Compressor Station;
10. Construct 2 new turbine units 13,000 HP each at the existing Sumner Compressor Station
11. Construct a new 7,700 HP turbine unit at its existing Willard Compressor Station;
12. Construct a new 7,700 HP turbine unit at the existing Goldendale Compressor Station;
13. Construct a new 7,700 HP turbine unit at its existing Roosevelt Compressor Station; and
14. Construct a new 1,330 HP turbine unit at its existing Plymouth Compressor Station.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 334.1 acres of land. The typical construction right-of-way would consist of the 75-foot-wide permanent right-of-way and about 20 feet of temporary workspace, but in certain areas, may be limited to the permanent 75-foot easement.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the

[1] NWP's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NWP. This preliminary list of issues may be changed based on your comments and our analysis.

- Small portions of the loop pipelines would be located on NWP-owned lands on the Muckleshoot Indian Reservation, Washington Department of Natural Resources land, or Skagit County land.
- The project would cross a total of 25 waterbodies and about 98 wetlands.
- Of the waterbodies crossed, some may contain domestic water rights; and some may have critical habitat designations for the Federally listed chinook and/or coho salmon.
- 15 federally listed endangered, threatened, or candidate species and four state-protected species may occur in the project area.
- A total of 33 residences are located within 50 feet of the construction right-of-way or temporary extra workspaces. Of these landowners, about 24 structures are within 25 feet of the construction area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas/Hydro.
- Reference Docket No. CP02–004–000.
- Mail your comments so that they will be received in Washington, DC on or before December 3, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28026 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Draft Environmental Assessment Accepted for Filing and Soliciting Motions To Intervene and Protests

November 2, 2001.

Take notice that the following hydroelectric application, including an applicant prepared draft environmental

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

assessment, have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 346–037.

c. *Date Filed:* August 23, 2001.

d. *Applicant:* Minnesota Power Inc., d.b.a. ALLETE, Inc.

e. *Name of Project:* Blanchard Hydroelectric Project.

f. *Location:* On the Mississippi River near the City of Little Falls, in Morrison County, MN. The project occupies federal lands of the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Bohm, ALLETE, Inc., P.O. Box 60, Little Falls, MN 56345, *rbohm@mnpower.com*, 320–632–2318, ext. 5042.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us*, 202–219–2778.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application has been accepted for filing, but are not ready for environmental analysis.

l. The existing Blanchard Project consists of: (1) A 750-foot-long, 62-foot-high concrete gravity dam comprising: (a) a 190-foot-long non-overflow section; (b) a 437-foot-long gated spillway section; (c) eight 44-foot-wide by 14.7-foot-high Taintor gates; and (d) a 124-foot-wide integral powerhouse; (2) approximately 3,540-foot-long earth dikes extending from both sides of the concrete dam; (3) a 1,152-acre reservoir at normal water surface elevation of 1,081.7 feet NGVD; (4) a powerhouse containing three generating units with a total installed capacity of 18,000 kW; and (5) other appurtenances.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received at the Commission on or before the specified deadline date.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28028 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

November 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11659–002.

c. *Date filed:* October 23, 2001.

d. *Applicant:* Gustavus Electric Company (GEC).

e. *Name of Project:* Falls Creek Hydroelectric Project.

f. *Location:* On Falls Creek (also known as the Kahtaheena River), in southeastern Alaska near the town of Gustavus. The project would be located on lands currently located within the boundary of Glacier Bay National Park and administered by the National Park Service. The Glacier Bay National Park Boundary Adjustment Act of 1998 (Act) provides that if a license is issued for the project, the minimum amount of Glacier Bay National Park land necessary to construct and operate the hydroelectric project would be transferred, as part of a land exchange, to the State of Alaska. The Act also authorizes the submittal of a license application for this project to the Federal Energy Regulatory Commission.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Richard Levitt, Gustavus Electric Company, P.O. Box 102, Gustavus, Alaska 99826; (907) 697–2299.

i. *FERC Contact:* Bob Easton, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426; (202) 219–2782, Email: *robert.easton@ferc.fed.us.*

j. The application is not ready for environmental analysis at this time.

k. *The Falls Creek Hydroelectric Project would consist of:* (1) An approximately 70-foot-long and 10-foot-high dam; (2) a 0.5-acre reservoir having no storage capacity at elevation 665 feet mean sea level; (3) a powerhouse containing one generating unit for a total installed capacity of 800 kilowatts; (4) 5 miles of buried transmission line; and (5) appurtenant facilities. The project is estimated to generate an average of 4.8 million kilowatthours annually. The dam and project facilities would be owned by the applicant.

1. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28029 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

November 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12118–000.

c. *Date filed:* September 7, 2001.

d. *Applicant:* Northern California Hydro Developers.

e. *Name and Location of Project:* The Robley Point Project would be located on the West Branch Feather River in Butte County, California near the Town of Paradise and would use U.S. Forest Service land within the Plumas National Forest.

f. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)—825(r).

g. *Applicant contact:* Mr. Daniel L. Ostrander, 12750 Quail Run Drive, Chico, California 95928, (530) 345–7029, fax (530) 345–1119.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12118–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) A proposed intake structure located at a natural pool on the West Branch Feather River, (2) a proposed 900-foot-long, 84-inch-diameter concrete pipe, (3) a proposed 4,200-foot-long, 8-foot-diameter tunnel bored through Robley Point, (4) a proposed 24,000-foot-long, 84-inch-diameter pipeline, (5) a proposed 900-foot-long penstock, (6) a proposed powerhouse containing two generating units having a total installed capacity of 20.1 MW, (7) a proposed 23,000-foot-long, 60-kV transmission line interconnecting to a 60-kV line belonging to Pacific Gas and Electric Co., and (8) appurtenant facilities. The project would have an annual generation of 55 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28030 Filed 11–7–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7100–3]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Action—Notification of a meeting to conduct an EPA Science Advisory Board (SAB) review of elements associated with EPA's proposed rules on the: (1) Stage 2 Disinfectants and Disinfection Byproducts Rule (S2DBPR) and (2) the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR).

Drinking Water Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Drinking Water Committee of the EPA Science Advisory Board (SAB) will meet from December 10 through 12, 2001. The meeting will be held at the Embassy Suites LAX Hotel, 9801 Airport Blvd., Los Angeles, CA 90045, telephone: (310) 215–1000. All times noted are Pacific Standard Time. The meeting is open to the public; however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Background Information—The U.S. Environmental Protection Agency (EPA) Science Advisory Board (SAB) initiated two reviews for the EPA Office of Water (OW) in a planning meeting that took place on September 25 and 26, 2001. As noted in the meeting announcement (July 27, 2001, 66 FR 39163) this September meeting was originally intended as a two-day face-to-face meeting to start the deliberative phase of the review. However, because of circumstances surrounding the September 11, 2001 national tragedies, this meetings were conducted in abbreviated form by telephone conference to plan for and to schedule the detailed review (see the minutes of this meeting on the EPA SAB Website at *www.epa.gov/sab/dwc92501m.pdf*).

In the discussion below, we provide information on the charge that has been given to the SAB and a summary of the background for each proposal.

1. Long Term 2 Enhanced Surface Water Treatment Rule

(a) General Information: The Safe Drinking Water Act requires EPA to develop National Primary Drinking Water Regulations for contaminants which have an adverse effect on the health of persons and where regulation provides a meaningful opportunity for public health protection. EPA is developing a Long Term 2 Enhanced Surface Water Treatment Rule to provide for increased protection of public water systems against microbial pathogens, with a specific focus on Cryptosporidium. The intent of the proposed LT2ESWTR is to supplement existing surface water treatment rules through establishment of targeted treatment requirements for systems with greater vulnerability to Cryptosporidium. Such systems include those with high source water pathogen levels and those that do not provide filtration. In addition, consistent with SDWA requirements for risk balancing, EPA will propose and finalize the LT2ESWTR simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule. This coordinated approach is designed to ensure that systems maintain adequate microbial protection while reducing risk from disinfection byproducts. A Federal Stakeholder Advisory Committee reached an Agreement in Principle during September 2000 with recommendations for both rules (65 FR 83015–83024).

(b) Charge—Long Term 2 Enhanced Surface Water Treatment Rule: EPA requested the SAB to comment on the following parts of the Agency's LT2ESWTR proposal and supporting documents: (1) The analysis of Cryptosporidium occurrence; (2) the pre- and post-LT2ESWTR Cryptosporidium risk assessment; and (3) the treatment credits for microbial toolbox options.

2. Stage 2 Disinfectants and Disinfection Byproduct Rule Proposal

(a) General Information: The 1996 Amendments to the Safe Drinking Water Act require EPA to promulgate a Stage 2 Disinfectants and Disinfection Byproducts Rule (section 1412(b)(2)(C)) by May 2002. The intent of the proposed S2DBPR is to reduce the variability of exposure to disinfection byproducts (DBPs) for people served by different points in the distribution systems of public water supplies. EPA believes that this decreased exposure will result in reduced risk from reproductive and developmental health effects and cancer. EPA is required under the Safe Drinking Water Act to promulgate the rule as the second part of a staged set of regulations addressing DBPs. Consistent with SDWA requirements for risk balancing, EPA will propose and finalize the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) at the same time as the Stage 2 DBP Rule in order to ensure parallel protection from microbial and DBP risks. A Federal Stakeholder Advisory Committee reached an Agreement in Principle in September 2000 with recommendations for both proposed rules (65 FR 83015–83024).

(b) Charge—Stage 2 Disinfectants and Disinfection Byproduct Rule Proposal: EPA requested the SAB to comment on (1) whether the locational running annual average (LRAA) standards for total trihalomethanes (TTHMs) and haloacetic acids (HAA5), in conjunction with the initial distribution system evaluation (IDSE) of the proposed Stage 2 DBPR, more effectively achieves public health protection than the current running annual average (RAA) standards, given the existing knowledge of DBP occurrence and the available health effects data, and (2) whether the IDSE is capable of identifying new compliance monitoring points that target high TTHM and HAA5 levels and whether it is the most appropriate tool available to achieve this objective.

Process to be followed by the SAB for this Review: (a) As stated earlier in this notice, this review was planned during the September 25 and 26, 2001 telephone conference call meeting. In this meeting, the standing Drinking Water Committee of the SAB received introductory briefings by EPA representatives on both rules and the Agency charge. The DWC members engaged in discussions with EPA representatives that clarified the charge and certain of the background materials that were earlier delivered by EPA to the Committee.

During the meeting, the Drinking Water Committee, established five subgroups, one to address each of the five agency charge questions. They also decided on the expertise needs for each. The makeup of the Subgroups and the expertise needs are discussed in the meeting minutes cited above in this notice.

(b) Panel Development: The SAB Panel for this review can be viewed at the SAB's Website at *www.epa.gov/sab*. The Panel consists of the membership of the DWC, augmented by experts in a number of disciplinary areas (e.g., public health management, drinking water treatment and monitoring, statistical techniques, risk assessment, etc.). The original **Federal Register** notice (July 27, 2001, 66 FR 39163) solicited public comments on the composition and balance of the panel and/or suggestions on persons to be added to the Panel for the second meeting. No formal comments were received as a result of this solicitation. Agency staff and SAB Members/Staff have provided suggestions for persons who can provide the needed expertise. These suggestions were considered in the SAB's decision on the final makeup of the review Panel for the December meeting.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Mr. Thomas O. Miller, Designated Federal Officer, SAB Drinking Water Committee (1400A), 1200 Pennsylvania Ave., NW., Washington, DC, 20460; by email at *miller.tom@epa.gov*, or by Fax at (202) 501–0582. For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 564–4539, FAX at (202) 501–0582, or email at: *fields.wanda@epa.gov*.

Materials that are the subject of this review are available as follows: (a) *Stage 2 DBPs*, Ms. Mary Manibusan, US EPA Office of Water (OW) (MS 4607), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Phone: (202) 260–3688 or via email at *manibusan.mary@epa.gov*; and (b) *LT2*, Mr. Dan Schmelling, US EPA Office of Water (OW) (MS 4607), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Phone: (202) 260–1439 or via email at *schmelling@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group wishing to make a brief oral presentation to the Panel must contact Mr. Thomas Miller, DFO for the DWC, no later than noon Eastern Time, Monday, December 3, 2001 in order to be included on the agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) the will represent, and any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). Presentations at face-to-face meeting will be limited to a total time of five minutes per speaker. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total for all speakers together. Speakers should provide to the SAB Staff Office, at least one week prior to the meeting date, (a) one signed hard copy of the comments for the file and (b) an electronic version of the comments [acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)]. In addition, the speaker should bring to the meeting at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Miller (see contact information above) in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at these meetings, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the relevant meeting so that appropriate arrangements can be made.

Dated: October 31, 2001.

John R. Fowle, III,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 01–28086 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–262; 94–1; DA 01–2547]

Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice of a limited extension of time for the filing of comments and reply comments on cost submissions by price cap local exchange carriers in the subscriber line charge (SLC) cost review proceeding.

DATES: Cost submissions due November 16, 2001. Comments due January 24, 2001. Reply comments due February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: By Public Notice dated September 17, 2001, we initiated a cost review proceeding to determine the appropriate residential and single-line business subscriber line charge (SLC) caps for price cap local exchange carriers (LECs). (66 FR 49022 September 25, 2001). On October 5, 2001, we issued a Public Notice granting several price cap LECs' request for a limited extension of time in which to file their cost submissions. (66 FR 52407 October 15, 2001). The National Association of State Utility Consumer Advocates (NASUCA) has requested an extension of time for filing comments in response to the cost submissions. We agree that an extension is warranted to allow parties with limited resources sufficient time to review and analyze large and complex cost submissions. Comments will be due no later than January 24, 2002, and reply comments will be due no later than February 14, 2002. When filing cost information and comments, parties should reference CC Docket Nos. 96–262 and 94–1.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other

rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Parties filing paper copies must file an original and four copies of all cost submissions, comments and reply comments with the Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554 in accordance with 47 CFR 1.51(c). Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, including the following words ''get form <your email address>'' in the body of the message. A sample form and directions will be sent in reply. In addition, one copy of each submission must be filed with Qualex International, the Commission's duplicating contractor, at its office at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, and one copy with the Chief, Competitive Pricing Division, 445 12th Street, SW., Room 5–A225, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28072 Filed 11–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2564]

Consumer/Disability Telecommunications Advisory Committee; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date, time, and agenda for the next meeting of the Consumer/Disability Telecommunications Advisory Committee (hereinafter ''the Committee''), whose purpose is to make recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations) in proceedings before the Commission.

DATES: The meeting of the Committee will take place on November 30, 2001, from 9 a.m. to 5 p.m.

ADDRESSES: The Committee will meet at the Federal Communications Commission, Room TW–C305, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer, Consumer/Disability Telecommunications Advisory Committee, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Telephone 202–418–2809 (voice) or 202–418–0179 (TTY); Email: *cdtac@fcc.gov*.

SUPPLEMENTARY INFORMATION: By Public Notice dated and released November 2, 2001, the Federal Communications Commission announced the next meeting of its Consumer/Disability Telecommunications Advisory Committee. The establishment of the Committee had been announced by Public Notice dated November 30, 2000, 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000).

At its August 6th meeting, the Committee will discuss the Telecommunications Act of 1996 and more specifically, whether competition in the local exchange and long distance markets has benefited consumers. Subcommittees will also be afforded time to conduct their business.

Availability of Copies and Electronic Accessibility

A copy of the November 2, 2001 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at *www.fcc.gov/cib/cdtac*. The Committee meeting will be broadcast on the Internet in Real Audio/Real Video format with captioning at *www.fcc.gov/cib/cdtac*. The meeting will be sign language interpreted and realtime transcription and assistive listening devices will also be available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout material will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's website at *www.fcc.gov/cib/cdtac*.

Committee meetings will be open to the public and interested persons may attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee will also have the opportunity to participate in work conducted by subcommittees of the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall. Notices of future meetings of the Committee will be published in the **Federal Register**.

Federal Communications Commission.

Scott Marshall,

Designated Federal Officer, Consumer/Disability Telecommunications Advisory Committee.

[FR Doc. 01–28076 Filed 11–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously Announced Date & Time: Thursday, November 8, 2001, Open Meeting Scheduled For 10:00 a.m. The Starting Time Has Been Changed to 11:30 a.m.

Previously Announced Date & Time: Thursday, November 15, 2001. Meeting Open To The Public. This Meeting Has Been Cancelled.

DATE & TIME: Wednesday, November 14, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting will be Closed to The Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–28253 Filed 11–6–01; 2:58 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Fiscal Year 2001 Grant Awards Made

AGENCY: Administration on Aging, HHS.

ACTION: Notice of non-competitive grant awards made in response to Omnibus Consolidated and Emergency Supplemental Appropriations For Fiscal Year 2001 and pursuant to Title IV of the Older Americans Act (42 U.S.C. 3001 *et seq.*).

SUMMARY: The Administration on Aging announces that it has made thirty-four (34) new non-competitive Title IV awards for FY 2001. The awards are as follows: Access Community Health Network, Inc., (IL) $243,058, September 1, 1999 to August 31, 2002; The Visiting Nurse Association Home Health, Inc., (WI), $88,084, September 1, 2001 to 8/31/2002; Aging in New York, Inc., (NY) $3,637,095 September 30, 2001 to September 29, 2002; St. Louis County Government, (MO), $418,950, September 30, 2001 to September 28, 2003; County of Ocean New Jersey, (NJ) $273,750, September 30, 2001 to September 30, 2003; San Luis Obispo County Medical Society (CA) $83,000, September 30, 2001 to March 29, 2003; University of Arkansas for Medical Sciences, (AR) $888,235, September 1 to September 30, 2002; Vermont Department of Aging and Disabilities (VT), $394,800, September 30 to February 28, 2003; Staten Island Community Services Friendship Clubs, Inc. (NY) $1,974, September 30, 2001 to September 29, 2002; Landmark Medical Center (RI), $922,845, September 30, 2001 to September 29, 2002; Ivy Tech State College (IN), $713,601, September 30, 2001 to September 29, 2002; Southwest General Health Center (OH), $98,700, August 31, 2001 to August 31, 2002; City of Compton, (CA) $419,475, September 30, 2001 to September 29, 2002; Burlington County Office on Aging (NJ) $364,203, September 30, 2001 to September 29, 2002; Progreso Latino, Inc (RI), $96,700, September 30 to September 29, 2002; The University of Akron College of Nursing (OH) $503,370, September 30 to March 31, 2003; Camden County Senior Tech Initiative (NJ), $181,608, September 30, 2001 to February 28, 2003; Lifespan of Greater Rochester (NY), $63,168, September 30, 2001 to September 29, 2002; Mecklenburg County Department of Social Services (NC) $909,027, September 30, 2001 to February 28, 2003; Walk the Walk, Inc., (NY) $167,790, September 1, 2001 to August 31, 2002; East Providence Senior Centers, (RI) $98,700, September 30, 2001 to March 31, 2003; Brandeis University (MA) $197,400, September 30, 2001 to September 29, 2002; Northwest Parkinson's Foundation (WA) $339,000, August 15, 2001 to August 14, 2002; Champlain Senior Center Inc. (VT), $98,700, August 1, 2001 to July 31, 2002; Deaconess Billings Clinic Foundation (MT) $1,381,800; September 30, 2001 to February 28, 2003; Metropolitan Family Services (IL), 0, September 30, 2001 to 2003; Florida International University, (FL) $682,017, September 1, 2001 to August 31, 2002; WV Research Corporation on Behalf of West Virginia University, (WV), $987,000, September 1, 2001 to January 31, 2003; Texas Tech University Health Science Center, (TX) $948,507, August 1, 2001 to August 31, 2002; Albert Einstein Medical Center, (PA) $493,500, September 30, 2001 to September 29, 2002; Bethlehem Evangelical Lutheran Church (NY), $1,974, August 31, 2001 to August 30, 2002; Florida Atlantic University (FL), $421,449, August 15, 2001 to August 14, 2002; NAHB Research Center, Inc. $461,883, March 1, 2001 to March 31, 2002; St. Petersburg College (FL), $74,482, August 31, 2001 to August 31, 2003.

Dated: November 1, 2001.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 01–28090 Filed 11–7–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76), dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 39178–39179, dated July 27, 2001) is amended to reorganize the Vaccine Preventable Disease Eradication Division, National Immunization Program.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and functional statement for the Vaccine Preventable Diseases Eradication Division (HCJ5) and insert the following:

Global Immunization Division (HCJ5). (1) Provides national leadership and coordination of the national Immunization Program (NIP) efforts to eradicate polio, control or eliminate measles, strengthen routine immunization programs, introduce new and under-utilized vaccines, and promote safe injection practices, in collaboration with the World Health Organization (WHO) and its regional offices, UNICEF, Rotary International, World Bank, USAID, American Red Cross, International Federation of Red Cross/Red Crescent Societies, UN Foundation, Bill and Melinda Gates Foundation, Path, other international organizations and agencies, and CDC Centers/Institute/Offices (CIOs); (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in global immunization activities and participates in international advisory group meetings on immunization issues; (3) administers grants to WHO, PAHO, UNICEF, and other international partners as appropriate for the provision of technical, programmatic, and laboratory support, and vaccine procurement for initiatives to support global immunization targets; (4) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of immunization strategies as may be developed; (5) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (6) refines strategies developed for the eradication or control of vaccine-preventable diseases in the Western Hemisphere for implementation in other parts of the world; (7) assists other countries in projects to improve surveillance for polio, measles, and other vaccine preventable diseases (VPDs), including development of computerized systems for disease monitoring; (8) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VPDs; (9) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (10) collaborates with other countries, WHO, UNICEF, and advocacy groups, to ensure the availability of sufficient funds to purchase an adequate supply of polio, measles, and other vaccines, and funds for technical

support, for use in eradication and control efforts; and (11) provides technical and operational leadership for CDC's activities in support of the Global Alliance for Vaccines and Immunization.

Office of the Director (HCJ51). (1) Manages, directs, and coordinates the activities of the division; (2) provides leadership in policy formation, program planning and development, program management, and operations of the division; (3) identifies needs and resources for new initiatives and assigns responsibilities for their development; (4) oversees the division's activities and expenditures; (5) serves as the principal CDC focus for liaison and coordination on VPD programs with CDC CIOs, other federal agencies, international organizations, foreign governments, and other organizations concerned with global immunizations; (6) provides direct supervision for activities in support of the Global Alliance for Vaccines and Immunization (GAVI); and (7) serves as the Associate Director for Global Immunization Activities.

GAVI Activity (HCJ512). (1) Plans, coordinates, and directs technical and programmatic activities in support of the Global Alliance for Vaccines and Immunization, in coordination with the WHO and its Regional offices, UNICEF, USAID, World Bank, Bill and Melinda Gates Foundation, PATH, other international organizations and agencies, and other CIOs; (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries who are receiving assistance under the GAVI alliance; (3) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of GAVI activities to introduce new vaccines, strengthen immunization programs and control or eradicate diseases and; (4) develops strategies to improve the technical skills and problem-solving abilities of immunization program managers in other countries; (5) assists other countries in projects to improve surveillance for vaccine-preventable diseases and monitoring immunization coverage and program effectiveness; (6) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for all VPDs, and in monitoring immunization program effectiveness; (7) prepares articles based on findings for publication in international professional journals and presentation at international conferences; and (8) provides administrative and program support to division staff assigned outside Atlanta to support GAVI activities.

Global Measles Branch (HCJ52). (1) Plans, coordinates, and directs technical and programmatic activities related to National Immunization Program (NIP) international efforts to control and eliminate measles, in collaboration with the World Health Organization (WHO) and its Regional Offices, UNICEF, USAID, American Red Cross, International Federation of Red Cross/Red Crescent Societies, UN Foundation, other international organizations and agencies, and other Centers/Institute/Offices (CIOs); (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global control and elimination of measles and participates in international advisory group meetings regarding measles elimination; (3) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of measles control and elimination strategies; (4) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (5) refines strategies developed for the control and elimination of measles in the Western Hemisphere for implementation in other parts of the world; (6) assists other countries in projects to improve surveillance for measles, polio, and other vaccine-preventable diseases, including development of computerized systems for disease monitoring; (7) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VPDs targeted for eradication; (8) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (9) administers grants to UNICEF, PAHO and WHO for provision of technical, programmatic, and laboratory support, and vaccine procurement; (10) provides administrative and programmatic support to branch staff assigned outside of Atlanta; and (11) together with the Office of the Director, coordinates and implements advocacy activities with American Red Cross, International Federation of Red Cross, USAID, WHO, UNICEF, and other global partners to ensure the availability of adequate resources for global measles control and regional elimination activities.

Polio Eradication Branch (HCJ53). (1) Plans, coordinates, and directs technical and programmatic activities related to National Immunization Program (NIP) efforts to eradicate polio, in collaboration with the World Health Organization (WHO) and its Regional Offices, UNICEF, Rotary International, USAID, International Federation of Red Cross/Red Cresent Societies, other international organizations and agencies, and other Centers/Institute/Offices (CIOs); (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and participates in international advisory group meetings regarding polio eradication; (3) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of polio eradication strategies; (4) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (5) refines strategies developed for the eradication of polio in the Western Hemisphere for implementation in other parts of the world; (6) assists other countries in projects to improve surveillance for polio, measles and other vaccine-preventable diseases, including development of computerized systems for disease monitoring; (7) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VPDs targeted for eradication; (8) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (9) provides technical training as part of Division sponsored courses for staff of CDC, WHO, UNICEF, Rotary International, and other immunization partners; (10) administers grants to UNICEF and WHO for provision of technical, programmatic, and laboratory support, and vaccine procurement; (11) provides administrative and programmatic support to branch staff assigned outside of Atlanta; and (12) together with Office of the Director, coordinates and implements advocacy activities with Rotary International, USAID, WHO, UNICEF, and other global partners to ensure the availability of adequate resources for polio eradication activities.

Dated: October 30, 2001.

David Fleming,

Deputy Director for Science and Public Health.

[FR Doc. 01–28015 Filed 11–7–01; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 39178–39179, dated July 27, 2001) is amended to restructure the Procurement and Grant Office, Office of Program Services, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Office of the Director (CA581), Procurement and Grants Office (CA58),* and insert the following:

(1) Provides leadership and guidance in all areas of Procurement and Grants Office (PGO) activities; (2) provides technical and managerial direction for the development of CDC-wide policies, procedures, and practices in the acquisition, assistance, and materiel management areas; (3) participates with senior management in program planning, policy determinations, evaluations, and decisions for award, administration, and termination of contracts, purchase orders, grants, and cooperative agreements; (5) maintains a continuing review of CDC-wide acquisition, assistance management, and materiel management operations to assure adherence to laws, policies, procedures, and regulations; (6) maintains liaison with HHS, GSA, and other Federal agencies on acquisition, assistance, and materiel management policy, procedure, and operating matters; (7) provides administrative services and direction for budget, property, travel, and personnel of the PGO; (8) processes data for, and maintains, the contract information system for CDC and HHS; (9) provides technical and managerial direction for the development, implementation and maintenance of automated acquisition systems needs on a CDC-wide basis; (10) provides administrative support activities for training and development of all PGO employees; (11) operates CDC's Small and Disadvantaged Business Program and provides direction and support to various other socioeconomic programs encompassing the acquisition and assistance activities; (12) provides cost advisory support to acquisition and assistance activities with responsibility for initiating requests for audits and evaluations, and providing recommendations to contracting officer or grants management officer; (13) as required, participate in negotiations with potential contractors and grantees; (14) develops overhead rates for profit and nonprofit organizations, and provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to acquisition and assistance processes; (15) provides information technology support with responsibility for planning, budgeting for, designing, developing, coordinating, monitoring, and implementing IT projects, activities and initiatives.

Delete the title and functional statement for the *Cost Advisory Activity (CA5812).*

Delete the functional statement for the *Contracts Management Branch (Pittsburgh) (CA583)* and insert the following:

(1) Plans, directs, and conducts the acquisition of non-personal services, research and development, studies, and data collection primarily for NIOSH through a variety of contractual mechanisms (competitive and non-competitive); (2) reviews statement of work from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract awards; (3) provides continuing surveillance of financial and administrative aspects of acquisition supported activities to assure compliance with appropriate HHS and CDC policies; (4) gives technical assistance, where indicated, to improve the management of acquisition supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, NIOSH and the public; (5) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (6) assures that contractors' total performance is in accordance with contractual commitments; (7) provides leadership and guidance to NIOSH project officers and program officials; (8) provides leadership, direction, procurement options and approaches in developing specifications/statement of work and contract awards; (9) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (10) maintain Branch's official contracts files; (11) maintains a close working relationship with NIOSH components in carrying out their missions; (12) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the functional statement for the *Materiel Management Branch (CA584)* and insert the following:

(1) Implements CDC-wide policies, procedures, and criteria required to implement Federal and Departmental regulations governing materiel management and transportation management; (2) evaluates operations to determine procedural changes needed to maintain effective management; (3) provides technical assistance to other parts of CDC on matters pertaining to materiel management, transportation management, and agent cashier services; (4) develops, designs, and tests materiel management systems and procedures; (5) represents CDC on inter- and intradepartmental materiel and transportation management committees; (6) maintains liaison with the Department and other Federal agencies on materiel management and transportation and traffic management matters; (7) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the titles and functional statements for the *Stores and Personal Property Section (CA5842)* and the *Transportation Section (CA5843).*

Delete the title and functional statement for the *Program Acquisition Branch (Washington) (CA587)* and insert the following:

Contracts Management Activity (Hyattsville) (CA587). (1) Plans, directs, and conducts the acquisition of non-personal services, research and development, studies, and data collection primarily for CDC/NCHS through a variety of contractual mechanisms (competitive and non-competitive); (2) reviews statements of work from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract awards; (3) provides continuing surveillance of financial and administrative aspects of acquisition supported activities to assure compliance with appropriate HHS and CDC policies; (4) gives technical assistance, where indicated, to improve the management of acquisition supported activities and responds to requests for management information from Office of Director, headquarters,

regional staffs, NCHS and the public; (5) performs contract administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (6) assures that contractors' total performance is in accordance with contractual commitments; (7) provides leadership and guidance to CDC/NCHS project officers and program officials; (8) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (9) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (10) maintains Activity's official contracts files; (11) maintains a close working relationship with NCHS in carrying out their missions; (12) establishes Activity goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the title and functional statement for the *Contracts Management Branch (CA588)* and insert the following:

Contracts Management Branch (Atlanta) (CA588). (1) Plans, directs, and conducts the acquisition of non-personal services, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) reviews statements of work from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract awards; (3) provides continuing surveillance of financial and administrative aspects of acquisition supported activities to assure compliance with appropriate HHS and CDC policies; (4) gives technical assistance, where indicated, to improve the management of acquisition supported activities and responds to requests for management information from Office of the Director, headquarters, regional staffs, Centers, Institute and Offices (CIOs) and the public; (5) plans, directs, and conducts the acquisition of commodities and equipment for CDC through a variety of contractual mechanisms; (6) plans, directs, and conducts the acquisition of information technology products and services for CDC through a variety of contractual and purchasing mechanisms; (7) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (8) assures that contractors' total performance is in accordance with contractual commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) provides training, consultation and advice to CDC field activities having purchasing authority; (12) participates with senior program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (13) maintains Branch's official contracts files; (14) maintains a close working relationship with CIOs and other CDC components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete in their entirety the titles and functional statements for *Office of the Chief (CA5881), Services Section I (CA5882), Services Section II (CA5883), Services Section III (CA5884), IT Section (5885),* and *Facilities, Construction, Commodities, and Equipment Section (CA5886).*

After the *Contracts Management Branch (Atlanta) (CA588),* insert the following:

Construction and Facilities Management Branch (HCA589). (1) Directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (2) plans, directs, and conducts the acquisition of non-personal services, institutional support services, architect-engineering services, construction of new buildings, alterations and renovations, and commodities and equipment in support of CDC facilities, utilizing a wide variety of contract types and pricing arrangements; (3) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (4) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (5) assures that contractors' total performance is in accordance with contractual commitments; (6) provides leadership and guidance to CDC project officers and program officials; (7) participates with senior program management in program planning, policy determination, evaluation, and direction concerning acquisition strategies and execution; (8) plans, directs, and coordinates activities of the Branch; (9) maintains Branch's official contract files; (10) maintains a close working relationship with the Facilities Planning and Management Office and other CDC components in carrying out their missions; (11) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with overall objectives of PGO.

International Contracts and Grants Branch (CA58A). (1) Plans, directs and conducts the acquisition of a wide variety of services, research and development, studies, data collection, equipment materials, and personal and nonpersonal services in support of CDC's international operations, utilizing a wide variety of contract types and pricing arrangements; (2) plans, directs and conducts assistance management activities for CDC's international programs; (3) provides leadership, direction, and acquisition options and approaches in developing specifications/statements of work and grants announcements; (4) participates with top program management in program planning, policy determination, evaluation and direction concerning acquisition and grants strategies and execution; (5) provides innovative problem-solving methods in the coordination on international procurement and grants for a wide range plan with partners in virtually all major domestic and international health agencies dealing with United Nations Foundation health priorities/issues to include resolution of matters with the Department of State; (6) executes contracts and grants in support of international activities; (7) provides business management oversight for contracts and assistance awards.

Dated: October 30, 2001.

David Fleming,

Deputy Director for Science and Public Health.

[FR Doc. 01–28014 Filed 11–7–01; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Operation and Management of a Tourist and Residential Project, Palmas del Mar, Humacao, Puerto Rico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Palmas del Mar Homeowners Association (PHA) (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of eggs and hatchlings from two nests of the endangered hawksbill sea turtle (*Eretmochelys imbricata*) or the endangered leatherback sea turtle (*Dermochelys coriacea*) and the take of one hawksbill or leatherback sea turtle female in the form of abandonment of nesting attempts or disorientation, on the beachfronts of Beach Village Regimes (phases) Beach Bohío, Crescent Cove, and Crescent Beach for a period of ten (10) years. The proposed taking is incidental to beach cleaning activities, vehicular driving on the beach, use of recreational beach equipment, lighting, and landscaping associated with the operation and management of the above mentioned buildings and facilities. Nest surveys conducted in the area indicate that both sea turtle species use the beach for nesting. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on these species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE033100–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *''david_dell@fws.gov''*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 10, 2001.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permit), or Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE033100–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Marelisa Rivera, Fish and Wildlife Biologist, Boquerón Field Office, (see **ADDRESSES**), telephone 787/851–7297.

SUPPLEMENTARY INFORMATION: Nesting grounds of the leatherback sea turtle are distributed world-wide. In the Caribbean, the species nests in French Guiana, Surinam, Guyana, Colombia, Venezuela, Panamá and Costa Rica. In the U.S. Caribbean, nesting has been reported from St. Croix, St. Thomas, St. John, and Puerto Rico. The U.S. Caribbean may support nesting by 150 to 200 adult females per year, representing the most significant nesting activity of this species within the United States. The largest concentration of nesting leatherback sea turtles in the U.S. Caribbean has been documented at Sandy Point National Wildlife Refuge, St. Croix, and Playa Brava and Playa Resaca on Culebra Island, Puerto Rico. Nesting females prefer high-energy beaches with deep and unobstructed access.

The hawksbill sea turtle is found throughout the world's tropical waters. Nesting within the U.S. Caribbean and Southeast U.S. occurs in Puerto Rico, the U.S. Virgin Islands and very infrequently in Florida. Two important known nesting areas in the U.S. Caribbean are Mona Island in Puerto Rico and Buck Island Reef National Monument in St. Croix, USVI. The species nests on beaches all around the coast of Puerto Rico, but the area that receives the highest number of nesting attempts is Mona Island, with approximately 500 nests per year.

Hawksbill sea turtles nest on high- and low-energy sandy beaches with woody vegetation such as sea grape or salt shrub located within a few meters of the water line. Suitable nesting habitat can be extremely variable, and range from high-energy ocean beaches to

tiny pocket beaches only a few meters in width.

Major threats to all sea turtle species include loss or degradation of nesting habitat from coastal development and beach armoring; disorientation of hatchlings and females by artificial lighting; poaching; disease; commercial trawling, longline and gill net fisheries; and illegal trade, particularly in hawksbill products.

Along the Humacao coast, a total of 117 leatherback nesting attempts and 230 hawksbill sea turtle nesting attempts have been documented (data collected in 1997 and 1998). Of these, 9 leatherback sea turtle nesting attempts and 49 hawksbill sea turtle nesting attempts occurred at the beachfront of the Project site buildings and facilities during this two-year period.

At Palmas del Mar, Humacao, beach cleaning activities, vehicular traffic on the beach, use of recreational beach equipment, lighting, and landscaping associated with existing buildings (Beach Village Regimes (II–IV–V), Beach Bohío, Crescent Cove and Crescent Beach) without management to accommodate sea turtles, will likely result in death of or injury to, sea turtle eggs and hatchlings, and disorientation or beach abandonment by nesting adults of leatherback sea turtle and hawksbill sea turtle, incidental to the carrying out of these otherwise lawful activities. Since 1996, six incidents have been reported documenting hatchling disorientation caused by artificial lighting, destruction of nests by construction and maintenance activities, or disorientation of adult females by artificial lighting. The ITP does not address these previous incidents (which were subject to Law Enforcement investigation), but would serve to minimize and avoid the possibility of future incidental take.

Under section 9 of the Act and its implementing regulations, ''taking'' of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has developed an HCP as required for their incidental take permit application.

The HCP describes measures the Applicant will take to minimize and mitigate taking at the Project site. To minimize impacts to listed species from the operation and management of the existing tourist/residential facilities, the Applicant will:

1. Modify beach cleaning:

a. Mechanical beach cleaning activities will be confined to daylight hours.

b. Monitor sea turtle nesting activity and inform personnel responsible for cleaning the beach area about the precise location of nests in order to protect them and avoid damaging nests.

c. All nests left in place will be marked to avoid effects during beach cleaning.

d. Mechanical cleaning will be limited to the area between the approximate water edge and the previous day's high tide mark or debris line.

e. Beach cleaning equipment will not encroach upon existing vegetation areas.

f. Removal of collected beach debris will occur immediately after the cleaning has been performed. No inorganic debris will be buried or stored on the beach. Organic debris will be disposed of outside the potential nesting area.

2. Restrict vehicle use:

a. The Golf Cart Agreement will include a regulation that indicates that the use of the vehicles on the beach is prohibited. Palmas Homeowners Association (PHA) will include this clause in the Licensee's Agreement.

b. Golf carts will only be allowed along the paths parallel to the beach.

c. Security will enter the beach only in case of an emergency. Specific areas will be designated for emergency access, only for official vehicles.

3. Modify operation of recreational facilities on the beach (Beach Bohío):

a. PHA will continue monitoring patrols to identify nesting activities.

b. PHA will implement a lighting plan to substitute the High Pressure Sodium lights for Low Pressure Sodium lights or bug lights, and use of low, shielded and directed light fixtures to reduce the amount of light on the beach.

c. Close open area below the Beach Bohío to avoid impacts to nesting in the area.

d. Use of the Beach Bohío will be terminated, music stopped, lights turned off and the facility closed to the public at 12 Midnight.

4. Regulate use of recreational beach equipment:

Crescent Cove Condominium, Crescent Beach Condominium and Wyndham Hotel will remove all beach equipment from the beach by dusk. All equipment will be stored in a designated area landward of the beach vegetation.

5. Regulate beach lighting:

A comprehensive lighting plan was developed for each building and facilities and incorporated into the HCP. Measures include installation of shields, replacement of light fixtures with bollards and use of Low Pressure Sodium lights, among others.

To mitigate for the nest that may be taken, the applicant will provide the following:

1. Beach Cleaning:

a. Construct an incubation cage or hatchery in a designated area to relocate nests at risk from erosion or poaching.

b. Provide training to beach cleaning personnel on how to detect sea turtle nests and how to protect them.

c. PHA will provide beach cleaning equipment with a rake or cleaning apparatus which limits penetration into the sand of not more than two (2) inches. Maximum tire pressure on beach cleaning equipment will be of 10 p.s.i.

d. Guests will be informed by brochures or in Palmas del Mar Homeowners News of the efforts to preserve sea turtles in order to create awareness and motivate them to avoid littering the beach.

e. The applicant will create a protocol to ensure effective communication between the STPL, DNER Rangers, and PHA.

2. Beach Driving:

a. Vegetation will be planted or barriers constructed to impede vehicle access from residential/tourist areas to beach areas.

b. Signs will be posted explaining that motor vehicles and horses are prohibited on the beaches.

3. Operation of recreational facilities on the beach (Beach Bohio):

All nests at the Beach Bohío area will be relocated to the hatchery or incubation cage.

4. Landscaping:

Vegetation along the coast will be restored with plants appropriate to the area such as sea grapes, West Indian creeper, beach morning glory, palm trees, beach plum, among others. Landscaping will not entail the substitution of sand with soil so it does not disrupt the nesting process of the turtles. The height of the vegetation will be maintained to at least four feet in order to serve as a natural barrier and to filter out disruptive lights. The vegetation will also control erosion and provide shade.

5. Education:

An environmental education program will be designed especially for Palmas del Mar Resort. Components of the program were extensively discussed in the applicant's HCP.

As stated above, the Service has made a preliminary determination that issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C)

of NEPA. This preliminary information may be revised due to public comment received in response to this notice.

The Service will also evaluate whether the renewal of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: October 15, 2001.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 01–28053 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Report/Statement for the South Subregion Natural Community Conservation Plan/Habitat Conservation Plan, County of Orange, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) reopens the comment period to gather additional information necessary to prepare, in coordination with the County of Orange, California (County), a joint programmatic Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the South Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) proposed by the County. The Service's previous notice, published August 23, 2001 (66 FR 44372), contained errors. We are republishing the corrected notice in its entirety.

We are furnishing this notice to: (1) Advise other Federal and State agencies, affected Tribes, and the public of our intentions; (2) reopen the public scoping period for 15 days; and (3) obtain suggestions and information on the scope of issues to be included in the EIR/EIS.

DATES: We will accept written comments until November 23, 2001.

ADDRESSES: Send comments to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008; facsimile (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Assistant Field Supervisor, (see ADDRESSES), telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act (Act) of 1973, as amended, and Federal regulation prohibiting the ''taking'' of a species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22.

The County and possibly other jurisdictions intend to request Endangered Species Act permits for federally listed threatened or endangered species and for unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species (including harm, injury, and harassment) during urban development in the approximately 200 square-mile study area in the southern County. The proposed NCCP/HCP would identify those actions necessary to maintain the viability of South Subregion coastal sage scrub habitat for the federally threatened coastal California gnatcatcher (*Polioptila californica californica*), and other species and major habitat types identified for inclusion and management during the preparation of the NCCP/HCP.

If the Service approves the NCCP/HCP, we may authorize incidental take of the California gnatcatcher and other identified federally listed species through issuance of Endangered Species Act incidental take permits. The NCCP/HCP, coupled with an Implementation Agreement, could also form the basis for issuing incidental take permits for other identified non-listed species, should these identified species be listed during the term of the permit.

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 FR 16742). The Final Rule was followed by a Special Rule on December 10, 1993 (50 FR 65088) to allow take of the California gnatcatcher pursuant to section 4(d) of the Act. The Special Rule defined the conditions under which take of the coastal California gnatcatcher and other federally-listed species, resulting from specified land use activities regulated by state and local government, would not violate section 9 of the Act. In the Special Rule the Service recognized the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 and encouraged their holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species. The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional NCCP prepared under the NCCP Program, provided the Service determines that the subregional NCCP meets the issuance criteria of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and 50 CFR 17.32(b)(2). The County currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit.

Proposed Action

The Service will prepare a joint EIR/EIS with the County's lead agency for the NCCP/HCP. The County will prepare an EIR in accordance with the California Environmental Quality Act. The County will publish a separate Notice of Preparation for the EIR.

The South Subregional NCCP/HCP study area covers more than 200 square miles in the southern and eastern portions of the County. This NCCP subregion is bounded on the east by the San Diego County line and on the north by Riverside County line. Along the west, the study area boundaries follow San Juan Creek inland to the Interstate 5 (I–5) overcrossing, then northwest along I–5 to El Toro Road, and north along El Toro Road to the intersection of Live Oak Canyon Road, and northeasterly on a straight line from that intersection to the northern apex of the County boundary. The subregion is bounded on the south by the Pacific Ocean.

The NCCP/HCP will describe strategies to conserve coastal sage scrub and other major upland and aquatic habitat types identified for inclusion and management, while allowing incidental take of endangered and threatened species associated with development. Development may include residential, commercial, industrial, and recreational development; public infrastructure such as roads and utilities; and maintenance of public facilities.

Preliminary Alternatives

The EIR/EIS for the South Subregion NCCP/HCP will assist the Service during its decision making process by enabling us to analyze the environmental consequences of the proposed action and a full array of alternatives identified during preparation of the NCCP/HCP. Although specific programmatic alternatives have not been prepared for public discussion, the range of alternatives preliminarily identified for consideration include:

Alternative 1, No Project/No Development Alternative

No land development and no NCCP/HCP directly impacting listed species.

Alternative 2, No Project/No NCCP/HCP Alternative

Conservation would rely on existing or future amended General Plans, growth management programs and habitat management efforts, and continuing project-by-project review and permitting pursuant to the NEPA and sections 7 and 10 of the Act.

Alternative 3, NCCP/HCP Alternative Based on Orange County Projections (OCP) 2000

Land uses projected by the County's OCP 2000 for Rancho Mission Viejo Lands would be considered for implementation under a Subregional NCCP/HCP approach designed to comply with the requirements of section 10(a) of the Endangered Species Act by assuring long-term value of coastal sage scrub and other major habitat types on a subregional level through the following measures:

(1) Permanently set aside coastal sage scrub and other major habitats consistent with Scientific Review Panel Reserve Design Criteria (1993).

(2) Address habitat needs of coastal sage scrub species and of other species that use major habitat types specifically identified for inclusion and management within the NCCP Reserve.

(3) Maintain and enhance habitat connectivity within the subregion and between adjacent subregions.

(4) Provide for adaptive habitat management within the NCCP Reserve, including, habitat restoration and enhancement.

Alternative 4, NCCP/HCP Alternative Based on Other Land Use Scenarios

Formulation of alternative subregional conservation plans and habitat reserve configurations designed to comply with the requirements of section 10(a) by assuring the long-term value of coastal sage scrub and other major habitat types on a subregional level through the same four general measures listed under Alternative 3.

Other Governmental Actions

The NCCP/HCP is being prepared concurrently and coordinated with the joint preparation by the U.S. Army Corps of Engineers and California Department of Fish and Game of a Special Area Management Plan (SAMP) and Master Streambed Alteration Agreement (MSAA) for the San Juan Creek and western San Mateo Creek watersheds. These watersheds cover most of the South NCCP Subregion. In addition to the concurrent SAMP/MSAA process, the County and Rancho Mission Viejo, the owner of the largest undeveloped property in the subregion, will be proceeding with consideration of amendments to the County General Plan and Zoning Code for that portion of the subregion owned by Rancho Mission Viejo. The SAMP/MSAA will involve the preparation of a concurrent joint programmatic EIR/EIS and the General Plan/Zoning amendment programs will involve the preparation of an EIR that will be distributed for review during the NCCP/HCP public planning process. The County will prepare and publish a separate Notice of Preparation for the General Plan Amendment and Zone Change EIR.

Service Scoping

We invite comments from all interested parties to ensure that the full range of issues related to the permit requests are addressed and that all significant issues are identified. We will conduct environmental review of the permit applications in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. We expect a draft EIR/EIS for the South Subregion NCCP/HCP to be available for public review in Fall 2002.

Dated: November 1, 2001.

David G. Paullin,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–28016 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mashantucket Pequot Tribe Liquor Control Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Mashantucket Pequot Tribe Liquor Control Code. The Code regulates the control, possession, and sale of liquor on the Mashantucket Pequot Tribe trust lands, in conformity with the laws of the State of Connecticut, where applicable and necessary. Although the Code was adopted on January 5, 1999, it does not become effective until published in the **Federal Register** because the failure to comply with the Code may result in criminal charges.

DATES: This Code is effective on November 8, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street NW., MS 4660–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Under the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of the adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Mashantucket Pequot Tribe Liquor Code, Resolution No. TCR110398–01 of 04, was duly adopted by the Mashantucket Pequot Tribal Council on January 5, 1999. The Mashantucket Pequot Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effect among individuals and family members with the Mashantucket Pequot Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

I certify that by Resolution No. TCR110398–01 of 04, the Mashantucket Pequot Tribe Liquor Control Code was duly adopted by the Mashantucket Pequot Tribal Council on January 5, 1999.

Dated: October 22, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Mashantucket Pequot Tribe Liquor Control Code, Resolution No. TCR110398–01 of 04, reads as follows:

Mashantucket Pequot Tribe Liquor Control Code

Section 1. Definitions for the Interpretation of this Code, Unless the Context Indicates a Different Meaning

Alcohol means the product of distillation of any fermented liquid, rectified either once or more often, whatever may be the original thereof, and includes synthetic ethyl alcohol, which is considered nonpotable.

Alcoholic liquor or alcoholic beverage includes alcohol, beer, spirits and wines and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being for beverage purposes. Any liquor or solid containing more than one of the four varieties so defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the following order: Alcohol, spirits, wines and beer. The provisions of this Code shall not apply to any liquid or solid containing less than one-half of one percent of alcohol by volume.

Backer means, except in cases where the permittee is himself the proprietor, the proprietor of any business or institution established by the Mashantucket Pequot Tribe, incorporated or unincorporated, engaged in the sale of alcoholic liquor on the Reservation, in which business a permittee is associated, whether as employee, agent or part owner.

Beer means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinking water.

Charitable organization means any nonprofit institution established for charitable or educational purposes by the Mashantucket Pequot Tribe.

Commission means the Land Use Commission and Commissioner means the Land Use Commissioner or the Office of the Land Use Commissioner.

Gaming Facility means that area of the Reservation in which gaming is conducted, as authorized by the Mashantucket Pequot Final Gaming Procedures, 56 FR 24996 (May 31, 1991), and the Mashantucket Pequot Gaming Law.

Mashantucket Pequot Tribe or Tribe means the federally recognized Tribe of the same name pursuant to 25 U.S.C. 1751 *et seq.*

Minor means any person under twenty-one years of age.

Nonprofit Public Museum means any public museum established for nonprofit, charitable, literary and/or educational purposes by the Tribe.

Person means natural person including partners but shall not include corporations, limited liability companies, joint stock companies or other associations of natural persons.

Premises means, if not otherwise defined herein, any public building or entity owned by the Tribe and located on its Reservation.

Reservation means the lands of Mashantucket Pequot Reservation held in trust by the United States.

Spirits means any beverage that contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whiskey and gin.

Tribal Council or Council means the governing body of the Mashantucket Pequot Tribe.

Wine means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry and champagne.

Section 2. Land Use Commission Enforcement

The Commissioner shall enforce the provisions of this Code on the Reservation excluding the Gaming Facility in which areas the laws and regulations of the State of Connecticut applicable to the sale and distribution of alcoholic beverages are enforced by the State pursuant to section 14(b) of the Mashantucket Pequot Final Gaming Procedures. It may generally do whatever is reasonably necessary for the carrying out this Code, and it may call upon other departments of the Tribal Government such as the Tribal Police and Legal Counsel for such information and assistance as it deems necessary in the performance of its duties.

No member of the Commission and no employee of the Commissioner who carries out the duties and responsibilities pursuant to this Code may, directly or indirectly, individually or as a member of a partnership or as a shareholder of a corporation, have any interest whatsoever in dealing in or in the manufacture of alcoholic liquor, nor receive any commission or profit whatsoever from, nor have any interest whatsoever in, the purchases or sales made by the persons authorized by this Code to purchase or sell alcoholic liquor. No provision of this section shall prevent any such Commission member or employee from purchasing and keeping in his possession, for the personal use of himself or members of his family or guests, any alcoholic liquor which may be purchased or kept by any person by virtue of this Code.

The moneys received from the permit fees shall be deposited into the general funds of the Tribe.

The Commissioner shall submit to the Tribal Council an annual report of its acts. The Commissioner shall keep a record of proceedings and orders pertaining to all permits granted, refused, suspended or revoked and of all reports sent to its office. It shall furnish, without charge, for official use only, certified copies of permits and documents relating thereto, to officials of the Tribal Government and of the State of Connecticut. All records pertaining to applicants and to permits of the current year or of the previous three years, including applications, approvals and denials, permits and licenses, documents requested through proper legal documents in related legal proceedings, shall be open to public inspection at reasonable times during office hours. All other records may be regarded as confidential by the Commissioner, except to the Tribal Council and in response to judicial process.

Section 3. Inspections, Inquiries, Hearings

The Commissioner is authorized to conduct any inspection, inquiry, or investigation and the Commission may conduct a hearing under oath relative to the matter of inquiry or investigation. At any hearing conducted by the Commission, it may require the production of records, papers and documents pertinent to such inquiry.

Section 4. Nature and Duration of Permit. Renewals by Transferee or Purchaser of Permit Premises

A permit shall be a purely personal privilege, good for one year after issuance, and revocable in the discretion of the Commission subject to appeal as provided in section 20, and shall not constitute property, nor shall it be subject to attachment and execution, nor shall it be alienable, nor shall it descend by the laws of testate or intestate devolution, but it shall cease upon the death of the permittee.

Section 5. Issuance of Permits

The Commissioner may issue permits in the classes described in this Code.

Section 6. Temporary Permit for Outings, Picnics or Social Gatherings

A temporary beer permit shall allow the sale of beer and a temporary liquor permit shall allow the sale of alcoholic liquor at any outing, picnic or social gathering conducted by a bona fide noncommercial organization established by the Mashantucket Pequot Tribe, which organization shall be the backer of the permittee under such permit. The profits from the sale of such beer or alcoholic liquor shall be retained by the organization conducting such outing, picnic or social gathering and no portion thereof shall be paid, directly or indirectly, to any individual or other corporation. Such permit shall be issued subject to the approval of the Commissioner and shall be effective only for the time limited by the Commissioner. The combined total of temporary beer permits and temporary liquor permits issued to an organization shall not exceed four during any one calendar year. The fee for a temporary beer permit shall be fifteen dollars per day and for a temporary liquor permit shall be twenty-five dollars per day.

Section 7. Ninety (90)-day Provisional Permit

A 90-day provisional permit shall allow the retail sale of alcoholic liquor by any applicant and his backer, if any, who has made application for a liquor permit pursuant to section 11 and may be issued at the discretion of the Commissioner. If said applicant or his backer, if any, causes any delay in the review conducted by the Commissioner pursuant to said section, the 90-day provisional permit shall cease immediately. Only one such permit shall be issued to any applicant and his backer, if any, for each location of the place of business which is to be operated under such permit and such permit shall be nonrenewable but may be extended due to delays not caused by the applicant. The fee for such 90-day permit shall be five hundred dollars ($500.00).

Section 8. Nonprofit Public Museum Permit

A nonprofit public museum permit shall allow the retail sale of alcoholic liquor by a nonprofit public museum located on the Reservation to be consumed on its premises by its patrons on any day on which such nonprofit public museum is open to visitors from the general public. Proceeds derived from such sales, except for reasonable operating costs, shall be used in furtherance of the charitable, literary and educational activities of such nonprofit public museum. section 36, insofar as said section refers to local regulation of sales, shall not apply to such permit. The annual fee for a nonprofit public museum permit shall be two hundred dollars ($200.00).

Section 9. Charitable Organization Permit

A charitable organization permit shall allow the retail sale of alcoholic liquor by the drink to be consumed on the premises located within the Reservation. Such permit shall be issued on a daily basis subject to the hours of sale in section 36 and only four such permits shall be issued to the same charitable organization in any calendar year. The fee for a charitable organization permit shall be twenty-five dollars ($25.00).

Section 10. Storage of Liquor; Approval of Facilities

Each permit shall also allow the storage, on the premises and at one other secure location registered with and approved by the Commissioner, of sufficient quantities of alcoholic liquor allowed to be sold under such permit as may be necessary for the business conducted by the respective permittees or their backers.

Section 11. Applications for Permits, Renewals; Fees; Publication, Remonstrance, Hearing

(a) For the purposes of this section, the filing date of an application means the date upon which the Commissioner, after approving the application for processing, mails or otherwise delivers to the applicant a placard containing such date.

(b) Any person desiring a liquor permit or a renewal of such a permit shall make a sworn application therefor to the Commissioner upon forms to be furnished by the Commissioner, showing the name and address of the applicant and of the backer, if any, the location of the place of business which is to be operated under such permit. Such application shall include a detailed description of the type of live entertainment that is to be provided. The application shall also indicate any crimes of which the applicant or his backer may have been convicted. Applicants shall submit documents sufficient to establish that any tribal regulations concerning hours and days of sale will be met. The Tribal Fire Marshal or his certified designee shall be responsible for approving compliance with the applicable fire regulations. The Commissioner may, at its discretion, conduct a review to determine whether a permit shall be issued to an applicant.

(1) The applicant shall pay to the Commissioner a nonrefundable application fee, which fee shall be in addition to the fees prescribed in this Code for the permit sought. An application fee shall not be charged for an application to renew a permit. The application fee shall be in the amount of Ten Dollars ($10.00) for the filing of each application for a permit by a charitable organization, or a temporary permit; and for all other permits in the amount of one hundred dollars for the filing of any initial application. Any permit issued shall be valid only for the purposes and activities described in the application.

(2) The applicant, immediately after filing an application, shall give notice thereof, with the name and residence of the permittee, the type of permit applied for and the location of the place of business for which such permit is to be issued and the type of live entertainment to be provided, all in a form prescribed by the Commissioner, by publishing notice of the same in a publication having a circulation on the Reservation at least once. The applicant shall affix, and maintain in a legible condition upon the outer door of the building wherein such place of business is to be located and clearly visible to the public, the placard provided by the Commissioner, not later than the day following the receipt of the placard by the applicant. If such outer door of such premises is so far from the public view that such placard is not clearly visible as provided, the Commissioner shall direct a suitable method to notify the public of such application. When an application is filed for any type of permit for a building that has not been constructed, such applicant shall erect and maintain in a legible condition a sign not less than six feet by four feet upon the site where such place of business is to be located, instead of such placard upon the outer door of the building. The sign shall set forth the type of permit applied for and the name of the proposed permittee shall be clearly visible to the public and shall be so erected not later than the day following the receipt of the placard. Such applicant shall make a return to the Commissioner, under oath, of compliance with the foregoing requirements, in such form as the Commissioner may determine, but the Commissioner may require any additional proof of such compliance. Upon receipt of evidence of such compliance, the Commission may hold a hearing as to the suitability of the proposed location. The provisions of

this subdivision shall not apply to temporary permits and charitable organization permits.

(c) Any ten residents of The Reservation may file with the Commissioner, within three weeks from the filing date of the application for an initial permit, and in the case of renewal of an existing permit, at least twenty-one days before the renewal date of such permit, a remonstrance containing any objection to the suitability of such applicant or proposed place of business. Upon the filing of such remonstrance, the Commission, upon written application, shall hold a hearing and shall give such notice as it deems reasonable of the time and place at least five days before such hearing is had. The remonstrance shall designate one or more agents for service, who shall serve as the recipient or recipients of all notices issued by the Commissioner. The decision of the Commission on such applications shall be final with respect to the remonstrance.

(d) No new permit shall be issued until the foregoing provisions of subsections (a) and (b) of this section have been complied with.

(e) The Commissioner may renew a permit that has expired if the applicant pays a nonrefundable late fee of One Hundred Dollars ($100.00), which fee shall be in addition to the fees prescribed in this Code for the permit applied for.

Section 12. Second Application

No person whose application for a permit has been denied on the ground that he is an unsuitable person may make another application for a permit within one year thereafter.

No person whose permit has been revoked may make an application for a permit under this Code within one year thereafter.

Section 13. Granting and Denial of Permits; Notice of Hearing

Permits may be granted without a hearing by the Commissioner in its discretion; but, in any case of the denial of or refusal to renew a permit, the Commissioner shall, in such manner as it directs, notify the applicant or permittee of its proposed action and set a day and place for a hearing thereon, giving the applicant or permittee reasonable notice in advance thereof. If, at or after such hearing, the Commission denies or refuses to renew the permit, as the case may be, notice of such decision shall forthwith be given to such applicant or permittee in such manner as the Commission directs.

Section 14. Mandatory Refusal of Permits to Certain Persons; Exceptions

The Commissioner shall refuse permits for the sale of alcoholic liquor to the following persons:

(1) any member of the tribal law enforcement or judiciary, which includes any officer or employee of the Tribal Police Department and any Judge or staff member of the Mashantucket Pequot Tribal Court or Court of Appeals; or

(2) a minor.

Section 15. Discretionary Refusal of Permit; Location or Character of Premises; Other Grounds

The Commissioner may refuse to grant permits for the sale of alcoholic liquor if he has reasonable cause to believe that:

(1) The proximity of the permit premises will have a detrimental effect upon any social or governmental institution as established by the Tribal Council or any residential area;

(2) the place has been conducted as a lewd or disorderly establishment; or

(3) there is any other reason as provided by tribal law, ordinance or regulation, which warrants such refusal.

Section 16. Discretionary Refusal of Permits; Disqualification of Applicant

The Commissioner may, in his discretion, refuse a permit for the sale of alcoholic liquor if he has reasonable grounds to believe that:

(1) The applicant appears to be financially irresponsible or neglects to provide for his family, or neglects or is unable to pay his just debts;

(2) the applicant has been provided with funds by any wholesaler or manufacturer or has any forbidden connection with any other class of permittee as provided herein or as provided in the Connecticut Liquor Control Act;

(3) the applicant is in the habit of using alcoholic beverages to excess;

(4) the applicant has willfully made a false statement to the Commissioner in a material matter;

(5) the applicant has violated this Code, or has been convicted of violating the liquor laws of any state or of the United States or has been convicted of a felony or has such a criminal record that the Commissioner reasonably believes he is not a suitable person to hold a permit; or

(6) if the permittee-applicant has not been delegated full authority and control of such premises and of the conduct of all business therein. Any backer shall be subject to the same disqualifications as herein provided in the case of an applicant for a permit.

A permittee may file a designation of an authorized agent with the Commissioner to issue or receive all notices or documents provided for in this section. The permittee shall be responsible for the issuance or receipt of such notices or documents by the agent.

Section 17. Permit to Specify Location and Revocability; Removal to Another Location

(a) Every permit for the sale of alcoholic liquor shall specify the location including the particular building or place in which such liquor is to be sold, and shall not authorize any sale in any other place or building. Such permit shall also be made revocable in terms for any violation of any of the provisions of this Code.

(b) Nothing in subsection (a) of this section shall be construed as prohibiting the Commissioner from permitting the removal of such permit premises to any location, for any reason, provided:

(1) removal to the proposed location complies with all land use regulations;

(2) the proposed location is not found to be unsuitable or prohibited by any other provision of this Code. The removal of the permit premises from the particular building or place specified in the permit without the approval of the Commissioner shall be grounds for the suspension or revocation of the permit.

Section 18. Permit to be Recorded

Each permit granted or renewed by the Commissioner shall be of no effect until a duplicate thereof has been filed by the permittee with the Tribal Council.

Section 19. Permit to be Hung in Plain View

Every permittee shall cause his permit or a duplicate thereof to be framed and hung in plain view in a conspicuous place in any room where the sales so permitted are to be carried on.

Section 20. Revocation or Suspension of Permits

The Commission may, of its own motion, revoke or suspend any permit upon cause found after hearing, provided ten days written notice of such hearing has been given to the permittee setting forth the charges upon which such proposed revocation or suspension is predicated. Any appeal from such order of revocation or suspension shall be taken in accordance with the applicable provisions of the Land Use Law.

The surrender of a permit for cancellation or the expiration of a permit shall not prevent the Commission from suspending or

revoking any such permit pursuant to the provisions of this section.

Section 21. Conviction of Permittee; Revocation or Suspension of Permit; Forfeiture

When any permittee has violated any of the provisions of this Code or has been convicted of a violation of any of the laws of the United States, the laws of the Mashantucket Pequot Tribe, or of any state, pertaining to the manufacture, sale, transportation or taxation of distilled spirits, beer and wine, or of any felony, or has forfeited his bond to appear in court to answer for any such violation, the Commission may, in its discretion, revoke or suspend his permit and order the forfeiture of all moneys that have been paid therefor, and such revocation or suspension and forfeiture shall be in addition to the penalties for such offense.

Section 22. Revocation of Permit Obtained by Fraud

Whenever any permit under this Code has been obtained by fraud or misrepresentation, the Commission, upon proof that such permit was so obtained, shall, upon hearing had, revoke the same, and all moneys paid therefor shall be forfeited.

Section 23. Offer in Compromise in Lieu of Suspension

The Commissioner, in its discretion may accept from any permittee or backer an offer in compromise in such an amount as may in the discretion of the Commissioner be proper under the circumstances in lieu of the suspension of any permit previously imposed by the Commissioner. Any sums of money so collected by the Commissioner shall be paid forthwith to the general funds of the Tribe.

Section 24. Certificate of Revocation, Suspension or Reinstatement

The Commissioner shall transmit a certificate of the revocation, suspension or reinstatement of any permit by it to the Tribal Council who shall attach such certificate to the duplicate copy of such permit on file.

Section 25. Appeal

Any applicant for a permit or for the renewal of a permit for the sale of alcoholic liquor whose application is refused or any permittee whose permit is revoked or suspended by the Commission or any ten residents who have filed a remonstrance pursuant to the provisions of section 11 and who are aggrieved by the granting of a permit by the Commission may appeal therefrom in accordance with the appellate provisions of the Land Use law.

Section 26. Substitution of Permittees; Fee

In any case a new permittee may be substituted when so requested, provided the person so substituted shall be a suitable person as defined and set forth in this Code, and such person shall be permitted to serve in the place and stead of the original permittee for the remainder or any part thereof of the term of the permit upon which he has been substituted and such a substitution may be made upon the death of a permittee, when so requested. A substitute permittee under this section shall not be subject to the provisions of section 11. In the case of an application to permanently substitute the identity of the permittee, the applicant shall pay to the Commissioner a nonrefundable application fee of Thirty Dollars ($30.00).

Section 27. Consumer Bars

The Commissioner may permit more than one consumer bar in any premises for which a permit has been issued under this Code for the retail sale of alcoholic liquor to be consumed on the premises. A consumer bar is a counter, with or without seats, at which a patron may purchase and consume or purchase alcoholic liquor. The fee for each additional consumer bar shall be One Hundred Fifty Dollars ($150.00) per annum.

Section 28. Unauthorized Sale Prohibited

The sale of alcoholic liquor, except as permitted by this Code, is prohibited, and any person or permittee who operates any establishment which is a place where alcoholic liquor is kept for sale or exchange contrary to law shall be liable to the penalties provided in section 41.

The sale of alcoholic liquor without a permit issued under the provisions of this Code in any premises located on the Reservation shall be unlawful. Any association or organization without such a permit, who sells or permits to be sold, to or by its members, guests or other persons, any alcoholic liquor shall be subject to the penalties provided in section 41.

Section 29. Unsuitable Persons Prohibited from Having Financial Interest in Permit Businesses; Employment of Minors

No person who is declared to be an unsuitable person to hold a permit to sell alcoholic liquor shall be allowed to have a financial interest in any such permit business.

Any person over age eighteen may be employed by an employer holding a permit issued under this Code. A minor performing paid or volunteer services of an emergency nature shall be deemed to be an employee subject to the provisions of this section.

Section 30. Sales to Minors; Intoxicated Persons and Drunkards; Exceptions

Any permittee who, by himself, his servant or agent, sells or delivers alcoholic liquor to any minor, or to any intoxicated person, or to any habitual drunkard, knowing him to be such an habitual drunkard, shall be subject to the penalties of section 41. Any person who delivers or gives any such liquors to such minor, except on the order of a practicing physician, shall be fined not more than one thousand five hundred dollars ($1,500.00). The provisions of this section shall not apply to:

(1) A sale or delivery made to a person over age eighteen who is an employee pursuant to section 29 and where such sale or delivery is made in the course of such person's employment or business;

(2) a sale or delivery made in good faith to a minor who practices any deceit in the procurement of an identity card, who uses or exhibits any such identity card belonging to any other person or who uses or exhibits any such identity card which has been altered or tampered with in any way; or

(3) a delivery made to a minor by a parent, guardian or spouse of the minor, provided such parent, guardian or spouse has attained the age of twenty-one and provided such minor possesses such alcoholic liquor while accompanied by such parent, guardian or spouse.

Section 31. Statement from Purchaser as to Age

For the purposes of section 30, any permittee shall require any person whose age is in question to fill out and sign a statement in the following form on one occasion when each such person makes a purchase:

(MM/DD) , (YYYY)

I, _____, hereby represent to _____, a liquor permittee of the Mashantucket Pequot Land Use Commission, that I am over the age of 21 years, having been born on

---

(MM/DD) , (YYYY),

at _____ (CITY, STATE) . This statement is made to induce said permittee to sell or otherwise furnish alcoholic beverages to the undersigned. I understand that The Mashantucket Pequot Tribe Liquor Control Code along with Title 30 of the Connecticut

General Statutes both prohibit the sale of alcoholic liquor to any person who is not twenty-one years of age.

I understand that I am subject to a fine of one hundred dollars for the first offense and not more than two hundred fifty dollars for each subsequent offense for willfully misrepresenting my age for the purposes set forth in this statement.

_____(Name) _____(Address)

Such statement once taken shall be applicable both to the particular sale in connection with which such statement was taken, as well as to all future sales at the same premises, and shall have full force and effect under subsection (b) as to every subsequent sale or purchase. Such statement shall be printed upon appropriate forms to be furnished by the permittee and approved by the Commissioner and shall be kept on file on the permit premises, alphabetically indexed, in a suitable file box, and shall be open to inspection by the Commissioner or any of its agents at any reasonable time. Any person who makes any false statement on a form signed by him as required by this section shall be fined not more than One Hundred Dollars ($100.00) for the first offense and not more than Two Hundred Fifty Dollars ($250.00) for each subsequent offense.

In any case where such a statement has been procured and the permittee is subsequently charged with serving or furnishing alcoholic beverages to a minor, if such permittee, in proceedings before the Commission, introduces such statement in evidence and shows that the evidence presented to him to establish the age of the purchaser was such as would convince a reasonable man, no penalty shall be imposed on such permittee.

Section 32. Inducing Minors to Procure Liquor; Exception

Any person who, for any purpose, induces any minor to procure alcoholic liquor from any person permitted to sell the same shall be subject to the penalties prescribed in section 41. The provisions of this section shall not apply to the procurement of liquor by a person over age eighteen who is an employee or permit holder under section 29 where such procurement is made in the course of such person's employment or business.

Section 33. Operator's License as Proof of Age; Misrepresentation of Age to Procure Liquor

Each person who attains the age of twenty-one years and has a motor vehicle or motorcycle operator's license, containing a full-face photograph of such person, may use and each permittee may accept such license as legal proof of the age of the licensee for the purposes of this Code. Any person who misrepresents his age or uses or exhibits, for the purpose of procuring alcoholic liquor, an operator's license belonging to any other person, shall be fined not less than two hundred nor more than Five Hundred Dollars ($500.00).

Section 34. Procuring Liquor by Person Forbidden to Purchase or by False Statement, Public Possession of Liquor by Minors Prohibited; Exceptions

Any person to whom the sale of alcoholic liquor is by law forbidden who purchases or attempts to purchase such liquor or who makes any false statement for the purpose of procuring such liquor shall be fined not less than two hundred nor more than Five Hundred Dollars ($500.00).

Any minor who possesses any alcoholic liquor in any public place or place open to the tribal community, including any club which is open to the public, shall be fined not less than two hundred nor more than Five Hundred Dollars ($500.00). The provisions of this subsection shall not apply to:

(1) A person over age eighteen who is an employee pursuant to section 29 and who possesses alcoholic liquor in the course of his employment or business;

(2) a minor who possesses alcoholic liquor on the order of a practicing physician; or

(3) a minor who possesses alcoholic liquor while accompanied by a parent, guardian or spouse, who has attained the age of twenty-one.

Section 35. Loitering on Permit Premises

Any permittee who, by himself, his servant or agent, permits any minor or any person to whom the sale or gift of alcoholic liquor has been forbidden according to law to loiter on his premises where such liquor is kept for sale, or allows any minor other than a person over age eighteen who is an employee pursuant to section 29 or a minor accompanied by his parent or guardian, to be in any room where alcoholic liquor is served at any bar, shall be subject to the penalties of section 41.

Section 36. Hours and Days of Closing

The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual in places operating a permit issued by the Commission shall be unlawful on:

(1) Monday, Tuesday, Wednesday, Thursday and Friday between the hours of 1 a.m. and 9 a.m.;

(2) Saturday between the hours of 2 a.m. and 9 a.m.;

(3) Sunday between the hours of 2 a.m. and 11 a.m.;

(4) Christmas, except for alcoholic liquor that is served with hot meals during the hours otherwise permitted by this section for the day on which Christmas falls; and

(5) January 1st between the hours of 3 a.m. and 9 a.m., except that on any Sunday that is January 1st the prohibitions of this section shall be between the hours of 3 a.m. and 11 a.m.

The Tribal Council may, by vote of a tribal meeting or by ordinance, reduce the number of hours during which sales shall be permissible, such action shall become effective on the first day of the month succeeding such action;

Nothing in this section shall be construed to require any permittee to continue the sale or dispensing of alcoholic liquor until the closing hour established under this section.

Section 37. Bottle Size; Prohibition Against Sale of Certain Size

No alcoholic liquor, except wine, shall be sold or offered for sale on the Reservation in one hundred-milliliter containers or bottles.

Section 38. Containers to be Sealed

Alcoholic liquors, except beer, cider, wine and cordials shall be purchased by the holders thereof in sealed bottles or containers and poured for sale and consumption from the original bottles or containers. No such bottle or container shall be refilled in whole or in part.

Section 39. Gifts, Loans and Discounts Prohibited Between Permittees Tie-In Sales

No permittee or group of permittees licensed under the provisions of this Ordinance in transaction with another permittee or group of permittees shall directly or indirectly offer, furnish or receive any free goods, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, discounts, guarantees, inducements or special prices, or other inducements with the sale of alcoholic beverages or liquors. No permittee shall require any purchaser to accept additional alcoholic liquors in order to make a purchase of any other alcoholic liquor.

Section 40. Liquor Seller Liable for Damage by Intoxicated Person

If any person, by himself or his agent, sells any alcoholic liquor to an

intoxicated person on the Reservation, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another whether within or without the Reservation, such seller shall pay just damages to the person injured, up to the amount of Twenty Five Thousand Dollars ($25,000.00), or to persons injured in consequence of such intoxication up to an aggregate amount of Fifty Thousand Dollars ($50,000.00), to be recovered in an action under this section, provided the aggrieved person or persons shall give written notice to such seller within 60 days of the occurrence of such injury to person or property of his or their intention to bring an action under this section. In computing such 60-day period, the time between the death or incapacity of any aggrieved person and the appointment of an executor, administrator, conservator or guardian of his estate shall be excluded, except that the time so excluded shall not exceed 120 days. Such notice shall specify the time, the date and the person to whom such sale was made, the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred. No action under the provisions of this section shall be brought but within one year from the date of the act or omission complained of.

The Tribe hereby expressly waives its sovereign immunity from suits in the Tribal Court for actions brought pursuant to this section founded upon an action of the Tribe, a tribal enterprise or institution, or their agents, servants, or employees acting within the scope of their authority, and nothing herein shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual and such sovereign immunity is waived only for purposes of an action against the Tribe as specifically authorized pursuant to this section. Any action brought pursuant to this section shall name the backer as the party defendant, and there shall be no separate cause of action existing against an agent servant or employee of the Tribe, a tribal enterprise, or institution, when acting within the scope of their authority.

The Tribal Court is hereby authorized and shall have jurisdiction over all actions brought pursuant to this section.

Section 41. Penalties

Any person found by the Commission to have violated any provision of this Code for which a specified penalty is not imposed, shall, for each offense, be fined not more than One Thousand Dollars ($1,000.00) and may be referred to the State Department of Consumer Protection, Liquor Division.

Section 42. Recognition of State Permits and Licenses

The Commissioner may recognize a valid Connecticut State Liquor Permit as a Tribal Liquor Permit upon review of the permit and the application submitted to the State Department of Consumer Protection, Liquor Division, provided that the type of permit sought is one provided for in this Code.

[FR Doc. 01–28012 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–934–5700; COC59690, COC59692]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas leases, COC59690 & COC59692, for lands in Moffat county, Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, on fraction thereof, per year and 16⅔ percent respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and Bureau of Land Management is proposing to reinstate leases COC59690 & COC59692 effective September 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Supervisory, Land Law Examiner, Oil and Gas Lease Management.

[FR Doc. 01–28097 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–01; N–60593]

Termination of Segregative Effect, Exchange N–60593; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the segregative effect of Exchange Proposal N–60593 initiated by Barrick Goldstrike Mines, Inc. and Ellison Ranching Company. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

EFFECTIVE DATE: December 10, 2001.

FOR FURTHER INFORMATION CONTACT: Helen Hankins, Elko Field Office, 3900 E. Idaho St., Elko, Nevada 89801, 775–753–0200.

SUPPLEMENTARY INFORMATION: On April 11, 1997, the land described below was segregated as to a proposed exchange with Barrick Goldstrike Mines, Inc. and Ellison Ranching Company. The exchange is no longer being pursued.

The segregative effect is hereby terminated for the following described land:

Mount Diablo Meridian, Nevada

T. 40 N., R. 47 E.,
  Sec. 1: lots 25, 27, 28.
T. 40 N., R. 48 E.,
  Sec. 6: lots 27, 28.
T. 41 N., R. 48 E. (resurveyed township),
  Sec. 1: lot 1, SE¼NE¼, E½SW¼, SE¼;
  Sec. 2: S½NW¼, W½SW¼;
  Sec. 3: lots 9–15 inclusive;
  Sec. 4: lots 9–12 inclusive, S½;
  Sec. 5: lots 7, 8, S½NW¼, S½;
  Sec. 6: lots 13–18 inclusive, lots 21–23 inclusive;
  Sec. 7: E½, E½W½;
  Sec. 8: lots 1–16 inclusive; (All)
  Sec. 9: lots 1–15 inclusive;
  Sec. 10: lots 1–8 inclusive; (All)
  Sec. 11: lots 1, 2;
  Sec. 12: lots 1–10 inclusive, NE¼;
  Sec. 13: lots 1–28 inclusive; (All)
  Sec. 14: SE¼NE¼, W½SW¼, E½SE¼;
  Sec. 15: lots 1–8 inclusive; (All)
  Sec. 16: lots 1–7 inclusive, NE¼;
  Sec. 17: lots 1–8 inclusive, S½; (All)
  Sec. 18: E½, E½W½;
  Sec. 19: E½, E½W½;
  Sec. 20: All;
  Sec. 21: E½NE¼, NE¼NW¼, W½SW¼, SE¼SW¼;
  Sec. 22: lots 1, 2, S½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;

Sec. 23: lots 1, 2, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 24: lots 1–8 inclusive;
Sec. 25: lots 1–10 inclusive, W½SW¼, SE¼SW¼;
Sec. 26: NW¼NE¼, N½NW¼, SE¼SE¼;
Sec. 27: NE¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 28: E½NE¼, W½, SW¼SE¼;
Sec. 29: All;
Sec. 30: E½, NE¼NW¼;
Sec. 31: N½NE¼, SE¼NE¼;
Sec. 32: N½N½, SE¼NE¼, SW¼NW¼, N½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 33: lots 1–3 inclusive, W½NE¼, NW¼, SE¼;
Sec. 34: NE¼, N½NW¼, W½SW¼, NW¼SE¼;
Sec. 35: N½;
Sec. 36: N½NW¼.

T. 41 N., R. 49 E.,
Sec. 4: lots 2, 4, SW¼NE¼, W½SE¼;
Sec. 5: lots 1–4 inclusive, S½N½, S½; (All)
Sec. 6: lots 1–7 inclusive, S½NE¼, SE¼NW¼, E½SW¼, NW¼SE¼, S½SE¼;
Sec. 7: Lots 2–4 inclusive, E½, E½NW¼, NE¼SW¼;
Sec. 9: W½NE¼;
Sec. 16: SW¼SE¼;
Sec. 17: W½W½;
Sec. 18: lots 1–4 inclusive, E½E½, SW¼NE¼, E½W½, SW¼SE¼;
Sec. 19: lot 1, N½NE¼, SE¼NE¼, NE¼NW¼, E½SW¼, SE¼;
Sec. 20: NW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 21: NW¼NE¼, NW¼SW¼, SW¼SE¼;
Sec. 28: W½NW¼, SE¼SW¼;
Sec. 29: N½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 30: lots 1–3 inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 31: NE¼NE¼;
Sec. 32: NE¼, N½NW¼;
Sec. 33: W½NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 42 N., R. 49 E.,
Sec. 21: E½SW¼, SE¼;
Sec. 22: SW¼NW¼;
Sec. 24: S½;
Sec. 25: All;
Sec. 26: E½, E½SW¼;
Sec. 27: N½SE¼, SW¼SE¼;
Sec. 28: N½, SW¼, W½SE¼;
Sec. 29: SE¼NE¼, E½SW¼, SE¼;
Sec. 31: lots 4, SE¼NE¼, E½SW¼, SE¼;
Sec. 32: All;
Sec. 33: NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;

T. 40 N., R. 50 E.,
Sec. 3: lots 25–29 inclusive;
Sec. 4: lots 21, 22;
Sec. 5: lots 21–28 inclusive;

T. 41 N., R. 50 E.,
Sec. 1: NW¼SW¼, S½S½, NE¼SE¼;
Sec. 2: SW¼, W½SE¼, SE¼SE¼;
Sec. 10: SE¼SE¼;
Sec. 11: N½, SE¼SW¼, E½SE¼;
Sec. 12: All;
Sec. 13: N½, NE¼SW¼, S½S½, NE¼SE¼;
Sec. 14: N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 15: S½NE¼, SE¼;
Sec. 22: NE¼NE¼, SE¼SE¼;
Sec. 23: E½NE¼, NW¼, NW¼SW¼, SE¼SW¼, SE¼;
Sec. 24: All;
Sec. 25: NE¼, N½NW¼, SE¼NW¼, SE¼SW¼, SW¼SE¼;
Sec. 26: All;
Sec. 27: NW¼NE¼, SE¼NE¼, E½SE¼;
Sec. 34: S½SE¼;
Sec. 35: N½, SW¼;
Sec. 36: W½NE¼, NW¼, E½SE¼.

T. 42 N., R. 50 E.,
Sec. 19: lot 4, E½, SE¼NW¼, E½SW¼;
Sec. 29: SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 30: lots 1–4 inclusive, E½, E½W½; (All)
Sec. 31: lot 1, N½NE¼, NE¼NW¼;
Sec. 32: N½NW¼;

T. 40 N., R. 51 E.,
Sec. 1: lots 2–4 inclusive, S½NW¼, NW¼SW¼;
Sec. 2: lots 1, 2, 4, S½NE¼, SE¼NW¼, S½;
Sec. 3: lots 1–4 inclusive, S½N½, SW¼, NW¼SE¼, SE¼SE¼;
Sec. 4: lots 1–4 inclusive, SE¼NE¼, S½NW¼, W½SW¼, SE¼;
Sec. 5: lots 1–4 inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 6: lots 2–4 inclusive, lot 7, SE¼NW¼, E½SW¼;
Sec. 7: lots 1–3 inclusive, E½NW¼;
Sec. 8: E½E½, NW¼NE¼, NW¼SE¼;
Sec. 9: W½E½, W½NW¼, NE¼SW¼, S½SW¼, SE¼SE¼;
Sec. 10: NE¼NE¼, S½NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 11: N½NE¼, SW¼NE¼, NW¼, S½;
Sec. 12: W½NW¼;
Sec. 14: N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 15: N½, SW¼SW¼, SE¼;
Sec. 16: N½SW¼, W½SE¼;
Sec. 17: NE¼NE¼;
Sec. 20: NE¼NE¼, E½SW¼;
Sec. 21: N½NE¼, SE¼NE¼, NW¼, W½SW¼, SE¼;
Sec. 22: All;

T. 41 N., R. 51 E.,
Sec. 4: SE¼SW¼;
Sec. 5: S½;
Sec. 6: lots 5–7 inclusive, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 7: lots 1–4 inclusive, E½, E½W½; (All)
Sec. 8: All;
Sec. 9: NE¼, E½W½, N½SE¼, SW¼SE¼;
Sec. 10: NW¼NW¼;
Sec. 14: E½SW¼, SW¼SE¼;
Sec. 15: SW¼SW¼;
Sec. 16: NW¼NE¼, NE¼NW¼, S½N½, S½;
Sec. 17: N½NE¼, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 18: lots 1, 2, 4, N½NE¼, E½NW¼, SE¼SW¼, SE¼;
Sec. 19: lots 1, 2, 4, NW¼NE¼, SE¼NE¼, E½NW¼, E½SE¼;
Sec. 20: N½, NE¼SW¼, S½SW¼, SE¼;
Sec. 21: N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, SW¼, E½SE¼;
Sec. 22: S½NE¼, W½NW¼, E½SW¼, SE¼;
Sec. 23: W½, SE¼;
Sec. 24: S½NW¼, SW¼, S½SE¼;
Sec. 25: N½NE¼, NW¼, NE¼SW¼, S½S½, NE¼SE¼;
Sec. 26: N½, NE¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 27: E½, E½NW¼, N½SW¼, SW¼SW¼;
Sec. 28: W½NE¼, SE¼NE¼, W½, SW¼SE¼;
Sec. 29: E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 30: lot 4, NE¼, NE¼SE¼;
Sec. 31: lots 1–4 inclusive, SE¼SE¼;
Sec. 32: E½, E½NW¼, SW¼;
Sec. 33: E½NE¼, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, W½SE¼;
Sec. 34: NE¼, NW¼NW¼, S½;
Sec. 35: N½NE¼, SW¼NE¼, NW¼, N½SW, E½SE¼;
Sec. 36: SW¼NE¼, NW¼NW¼, SE¼NW¼, NW¼SW¼, SE¼SW¼, N½SE¼, SW¼SE¼.

T. 41 N., R. 52 E.,
Sec. 3: lots 1–3 inclusive, S½NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, SE¼;
Sec. 4: lots 1–4 inclusive, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 5: lot 1;
Sec. 8: SE¼NE¼, E½SE¼;
Sec. 9: N½NE¼, W½;
Sec. 16: NW¼, N½SW¼;
Sec. 17: NE¼, N½SE¼, SW¼SE¼.

T. 42 N., R. 52 E.,
Sec. 27: SW¼SW¼, SW¼SE¼;
Sec. 34: E½, E½SW¼;

The area described contains 53,985.51 acres in Elko County.

1. At 9 a.m. on December 10, 2001, the land described above will be opened

Sec the operation of the public land laws, subject Sec valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior Sec 9:00 a.m. December 10, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on December 10, 2001, the land described above will be opened Sec location and entry under the United States mining laws, subject Sec valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior Sec the date and time of resSecration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required Sec establish a location and Sec initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locaSecrs over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 2, 2001.

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 01–28052 Filed 11–8–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan Channel Islands National Park, CA; Notice of Intent

SUMMARY: In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing a general management plan (GMP) and an environmental impact statement (EIS) for Channel Islands National Park. The GMP will establish the overall direction for the park, setting broad management goals for managing the area over the next 15 to 20 years. The GMP will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park. Based on the desired conditions, the GMP will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park. Among the topics that will be addressed are ecosystem management, preservation of natural and cultural resources, landscape restoration, island access, road and trail systems, facility and staff needs, research needs and opportunities, and education and interpretive efforts. In cooperation with local, state, tribal, and other federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Channel Islands National Park.

Some of the issues the GMP/EIS may address are: levels and appropriateness of access to and within the park (including the extent and character of the existing road systems), infrastructure needs (including administration and support functions), conflicts between cultural and natural resource management, management of marine resources across jurisdictional boundaries, developments on floodplains, and uses of historic structures.

A range of reasonable alternatives for managing the park, including a no-action and preferred alternative, will be developed through the planning process and included in the EIS. The EIS will evaluate the potential environmental impacts of the alternatives. An environmentally preferred alternative will be identified, and any potential impairments to park values will also be disclosed.

Comments: As the first phase of the conservation planning and EIS process, the National Park Service is beginning to scope the issues to be addressed in the GMP/EIS. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions regarding the issues or concerns the GMP/EIS should address, including the suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts. Written comments may be mailed to the address below, and comments may also be submitted via email to *channel_islands_gmp@nps.gov*. Please submit Internet comments as a text file and avoid the use of special characters and any form of encryption. Be sure to include name and return postal mailing address in any Internet message. All comments must be postmarked or transmitted not later than December 31, 2001.

In addition, three public scoping sessions will be held at Ventura, Santa Barbara, and Los Angeles during the week of November 12, 2001, affording an additional early comment opportunity. Locations, dates, and times of these meetings will be provided in local and regional newspapers, a scoping newsletter to be mailed in late October 2001, and via the Internet at *www.nps.gov/chis.* A third opportunity to comment will be provided in response to the scoping newsletter. The newsletter will describe the planning process and schedule, note the park's purposes and significance, and outline issues identified to date.

All comments received will become part of the public record and copies of comments, including any names and home addresses of respondents, may be released for public inspection. Individual respondents may request that their home addresses be withheld from the public record, which will be honored to the extent allowable by law. Requests to withhold names and/or addresses must be stated prominently at the beginning of the comments. Anonymous comments will not be considered. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Written comments, general park information requests, or requests to be added to the project mailing list should be directed to: Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001–4354, telephone (805) 658–5777.

DECISION PROCESS: The subsequent availability of the draft GMP/EIS will be announced by **Federal Register** notice and in local and regional news media. A draft GMP/EIS is anticipated to be completed and available for public review during the summer of 2003. The final GMP/EIS is expected to be completed approximately one year later. A record of decision will be published in the **Federal Register** no sooner than thirty days after distribution of the final GMP/EIS. The responsibility for approving the GMP/EIS has been delegated to the National Park Service, and the responsible official is John J. Reynolds, Regional Director, Pacific West Region. The official responsible subsequently for implementation will be the Superintendent, Channel Islands National Park.

FOR FURTHER INFORMATION CONTACT: Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001–4354; telephone (805) 658–5730. General information about Channel Islands National Park is available on the Internet at *http://www.nps.gov/chis.*

Dated: September 13, 2001.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 01–27695 Filed 11–7–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Docket No. USITC SE–01–040]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 13, 2001 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–422–425 and 731–TA–964–983 (Preliminary) (Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 13, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 20, 2001.)
5. Inv. Nos. 701–TA–426 and 731–TA–984–985 (Preliminary) (Sulfanilic Acid from Hungary and Portugal)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 13, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 20, 2001.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 5, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28180 Filed 11–6–01; 1:22 pm]

BILLING CODE 7020–02–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 10, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Robert J. McDonald, (703) 518–6416, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *bobm@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Robert J. McDonald, (703) 518–6416. It is also available on the following website: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0064.

Form Number: CLF—7000, 7001, 7002, 7003, & 7004.

Type of Review: Extension of a currently approved collection.

Title: Forms and Instructions for Central Liquidity Facility (CLF) Loans.

Description: Forms used by each borrower from the CLF.

Respondents: Credit Unions that borrow from the CLF.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–28059 Filed 11–7–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 10, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Robert J. McDonald, (703) 518–6416, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *bobm@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Robert J. McDonald, (703) 518–6416. It is also available on the following web site: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0063.

Form Number: CLF–8702.

Type of Review: Revision to a currently approved collection.

Title: Central Liquidity Facility (CLF) Regular Member Membership Application.

Description: This is a one-time form used to request membership in the CLF.

Respondents: Credit unions seeking membership in the CLF.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: .50 hours.

Frequency of Response: Other. As credit unions request membership in the CLF.

Estimated Total Annual Burden Hours: 12.5 hours.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–28060 Filed 11–7–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 10, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Robert J. McDonald, (703) 518–6416, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *bobm@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Robert J. McDonald, (703) 518–6416.

SUPPLEMENTARY INFORMATION: Proposals for the following collection of information:

OMB Number: 3133–0114.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Payment on Shares by Public Units and Nonmembers.

Description: 5 CFR 701.32 limits nonmember and public unit deposits in federally insured credit unions to 20 percent of their shares or $1.5 million, whichever is greater. The collection of information requirement is for those credit unions seeking an exemption from the above limit.

Respondents: Credit Unions seeking an exemption from the limits on share deposits by public unit and nonmember accounts set by 5 CFR 701.32.

Estimated No. of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Other. As exemption is requested.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–28061 Filed 11–7–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 10, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Robert J. McDonald (703) 518–6416, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *bobm@ncua.gov*

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Robert J. McDonald, (703) 518–6416.

SUPPLEMENTARY INFORMATION: Proposals for the following collection of information:

OMB Number: 3133–0116.

Form Number: NCUA 9600, NCUA 4401, NCUA 4221, NCUA 4505, & NCUA 4506.

Type of Review: Extension of a currently approved collection.

Title: 12 U.S.C. 1771—Conversion from Federal to State Credit Union and from State to Federal Credit Union.

12 U.S.C. 1781—Insurance of Member Accounts—Eligibility.

Description: The forms constitute the application for an approval of credit union conversions from federal to state charter and from state to federal charter. In addition, forms in the package contain the application and approval for federal insurance of member accounts in credit unions.

Respondents: Credit unions seeking to convert from federal to state charter and from state to federal charter and non-federally insured state chartered credit unions seeking federal share insurance.

Estimated No. of Respondents/ Recordkeepers: 50

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Other. As credit unions seek approval to convert charter or federal share insurance.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–28062 Filed 11–7–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 10, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Robert J. McDonald (703) 518–6416, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *bobm@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Robert J. McDonald, (703) 518–6416. It is also available on the following website: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0061.

Form Number: CLF–8703.

Type of Review: Revision to a currently approved collection.

Title: Central Liquidity Facility (CLF) Repayment Agreement, Regular Member.

Description: The form is used by CLF regular members borrowing from the CLF.

Respondents: Credit Unions which are CLF regular members who borrow from the CLF.

Estimated No. of Respondents/ Recordkeepers: 40.

Estimated Burden Hours Per Response: 2.875 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 115 hours.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 2, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–28063 Filed 11–7–01; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by November 13, 2001.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov,* and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Emergency Clearance for Data Collection in Support of A Cross-Site Evaluation of National Science Foundation's Directorate for Education and Human Resources The Cross Site Analysis of The Integrative Graduate Education and Research Traineeship (IGERT) Program

OMB Approval Number: OMB 3145- (new).

Expiration Date: Not applicable.

Abstract: The National Science Foundation requests a 180-day emergency clearance for the Cross Site Analysis of the Integrative Graduate Education and Research Traineeship (IGERT) Program. This site-based interview component is a part of a mixed method impact study and complements and verifies data from the previously cleared IGERT Distance Monitoring System. NSF has determined that it cannot reasonably comply with the normal clearance procedures both because of the time-sensitive nature of this portion of the IGERT evaluation, and because of the burden to the 1998 cohort projects, and to visiting peer scientists, who have already agreed to participate in site visits. Without emergency clearance, it will not be possible to complete the 15 site visits in this cohort of projects (currently in their third year) during this academic year. For data to be useful to the IGERT Program Office, visits must be made during this pivotal third year of the five-year funding cycle, which allows time both for sufficient program development, and for NSF-requested project modifications, if necessary. The projects involve multiple departments/ schools within universities as well as external partners and scheduling visits is difficult. Many sites have scheduled visits on the expectation of clearance and would be forced to reschedule

without this emergency clearance, seriously inconveniencing both university personnel and other site visit participants.

Respondents: Individuals or households, business or other for-profit, and not-for profit institutions.

Number of Respondents: 880.

Burden on the Public: 843 hours.

Dated: November 2, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–28049 Filed 11–7–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested parsons are invited to send comments regarding the burden of any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by November 13, 2001.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov,* and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Emergency Clearance for Data Collection in Support of a Cross-Site Evaluation of National Science Foundation's Directorate for Education and Human Resources the Cross-Project Evaluation of the National Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC)

OMB Approval Number: OMB 3145–0161.

Expiration Date: Not applicable.

Abstract: The National Science Foundation (NSF) requests a six-month extension for surveys in the Local Systemic Change (LSC) through Teacher Enhancement Program which was previously approved through September 2001 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design. A disruption in the data collection process would jeopardize the completion of the annual report NSF needs in order to provide programmatic impact information to Congress as well as planned longitudinal analyses.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teacher in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

Respondents: Individuals or households, and not-for-profit institutions.

Number of Respondents: 14,760.

Burden on the Public: 4,950 hours.

Dated: November 2, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–28050 Filed 11–7–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the

submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by November 16, 2001.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov,* and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

NSF has determined that it cannot reasonably comply with the normal clearance procedures under 5 CFR 1320 because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. NSF is requesting emergency review from OMB of this information collection to enable the NSF/REC to proceed with the ongoing evaluation of the Preparing Future Faculty (PFF) Program. Emergency review and approval of this ICR will assure continuation of the PFF evaluation that is also funded by the Atlantic Philanthropies. OMB approval has been requested for November 16, 2001. If granted, the emergency approval is only valid for 180 days.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the NSF requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 7, 2002. to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Emergency Clearance for Data Collection in Support of a Cross-Site Evaluation of National Science Foundation's Directorate for Education and Human Resources; Evaluation of the Preparing Future Faculty (PFF) Program

OMB Approval Number: OMB 3145–NEW.

Expiration Date: Not applicable.

Overview of this information collection:

Titles of survey instruments and protocol for Evaluation of the Preparing Future Faculty Program:

- PFF Grantee Survey (parts A and B)
- PFF Partner Faculty Survey
- PFF Graduate Faculty Survey
- PFF Participant Survey
- PFF Site Visit Protocol

This collection will be used by NSF to evaluate the impact and effectiveness of Preparing Future Faculty programs on graduate education and the development of future professors.

Respondents: Not-for-profit institutions, individuals; faculty, and students.

Number of Respondents: 4,003.

Burden on the Public: 788 hours.

Dated: November 2, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–28051 Filed 11–7–01; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27462]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 2, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 26, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 26, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Reliant Energy, Inc., et al. [70–9895]

Reliant Energy Incorporated (''REI''), a Texas public-utility holding company exempt by order under section 3(a)(2) of the Act,[1] and its wholly owned Texas subsidiary company formed for purposes of the transactions described in this filing, CenterPoint Energy, Inc. (''Regco''), 1111 Louisiana, Houston, TX 77002, have filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act in connection with a corporate restructuring (''Restructuring'') of REI.

REI is a Texas electric utility company and a combination electric and gas public-utility holding company. Through its unincorporated HL&P division (the ''HL&P Division''), REI generates, purchases, transmits and distributes electricity to approximately

[1] *Houston Industries,* Holding Co. Act Release No. 26744 (July 24, 1997).

1.7 million customers in Texas. REI primarily serves a 5,000-square mile area on the Texas Gulf Coast, including the Houston metropolitan area. All of REI's electric generation and operating properties are located in Texas. For the six months ended June 30, 2001, HL&P reported operating income of $528 million on total operating revenues of $2.9 billion.

As an electric utility, the HL&P Division is subject to regulation by the Public Utility Commission of Texas (the ''Texas Commission'') and to the provisions of the Texas Act, as that term is defined below. REI is a member of the Electric Reliability Council of Texas, Inc. (''ERCOT''), which provides the function of Independent System Operator for its member utilities.[2]

REI conducts natural gas distribution operations through three unincorporated divisions of its wholly owned gas utility subsidiary, Reliant Energy Resources Corp. (''GasCo''): (1) The Entex Division, which serves approximately 1.5 million customers, located in Texas (including the Houston metropolitan area), Louisiana and Mississippi; (2) the Arkla Division, which serves approximately 740,000 customers located in Texas, Louisiana, Arkansas, and Oklahoma; and (3) the Minnegasco Division, which serves appropriately 680,000 customers in Minnesota. The largest communities served by Arkla are the metropolitan areas of Little Rock, Arkansas and Shreveport, Louisiana. Minnegasco serves the Minneapolis metropolitan area.

The Entex Division is subject to regulation by the Texas Railroad Commission, the Louisiana Public Service Commission (the ''Louisiana Commission'') and the Mississippi Public Service Commission (the ''Mississippi Commission''). The Arkla Division is subject to regulation by the Texas Railroad Commission, the Louisiana Commission, the Arkansas Public Service Commission (the ''Arkansas Commission'') and the Corporation Commission of the State of Oklahoma (the ''Oklahoma Commission''). The Minnegasco Division is subject to regulation by the Minnesota Public Utilities Commission (the ''Minnesota Commission'').

For the six months ended June 30, 2001, the Entex, Arkla, and Minnegasco Divisions reported combined net operating income of $66.8 million. At June 30, 2001, reported net property, plant and equipment were $1.551 million.

REI conducts its nonutility operations, including merchant power generation and energy trading and marketing, largely through its partially owned nonutility subsidiary company, Reliant Resources, Inc. (''Unregco''), and Unregco's subsidiary companies. These nonutility subsidiaries include wholesale power, trading and communications operations. As discussed below, REI plans to spin off Unregco.

REI's existing structure resulted from the acquisition by Houston Industries Incorporated (''Houston Industries'') of NorAm Energy Corp. (''NorAm'') in August 1997.[3] Prior to the acquisition, Houston Industries' principal utility operations were conducted through its electric utility subsidiary, Houston Light & Power Company (''HL&P''). NorAm engaged in gas distribution operations. In the merger, Houston Industries merged into HL&P (which then adopted the name Houston Industries Incorporated). HL&P became a division of the holding company, Houston Industries, and NorAm become a first tier, wholly owned subsidiary of the holding company.

In 1999, the name of the holding company was changed from Houston Industries to Reliant Energy, Incorporated, referred to herein as REI, and the electric utility company became Reliant Energy HL&P, a division of REI referred to herein as the HL&P Division. NorAm became Reliant Energy Resources Corp., referred to herein as GasCo.

In June, 1999, S.B. 7, known as the Texas Electric Choice Plan (the ''Texas Act''), substantially amended the regulatory structure governing electric utilities in Texas to provide for full retail competition beginning on January 1, 2002. Under the Texas Act, traditionally vertically integrated electric utility companies are required to separate their generation, transmission and distribution, and retail activities.

On March 15, 2001, the Texas Commission approved a business separation plan (the ''Business Separation Plan'') under which REI's existing electric utility operations would be separated into three businesses: a power generation company (''PGC''), a transmission and distribution utility (''T&D Utility'') and a retail electric provider (''REP''). Full implementation of the Business Separation Plan will occur over a period of four years.

Under the Business Separation Plan, Unregco will be the successor to REI as the retail electric provider (''REP'') to customers in the Houston metropolitan area when the Texas market opens to competition in January 2002. Unregco will become the REP for all of REI's customers in the Houston metropolitan area that do not take action to select another retail electric provider.[4]

As a preliminary step toward the Restructuring, REI formed Unregco as a subsidiary and transferred to it, or its subsidiaries, substantially all of REI's nonutility operations, including merchant power generation, energy trading and marketing, and communications operations. On May 4, 2001, Unregco completed an initial public offering (''IPO'') of approximately 20% of its common stock. REI expects that the IPO will be followed within twelve months by a tax-free distribution of the remaining Unregco common stock to the shareholders of REI or its successor. As a result of the distribution, Unregco will cease to be an affiliate of REI or Regco for purposes of the Act and will become a separate publicly traded corporation.

The Restructuring itself will proceed in two stages.

1. The Electric Restructuring

In the first stage, Regco will form Texas Genco Holdings, Inc. (''Texas Genco Holdings'') as a Texas indirect wholly owned limited partnership PGC subsidiary. REI will contribute its regulated assets used to generate electric power and energy for sale within Texas and the liabilities associated with those assets (the ''Texas Genco assets'') to Texas Genco Holdings. Texas Genco Holdings, in turn, will contribute the Texas Genco assets to two newly formed limited liability companies, which, in

[2] ERCOT represents a bulk electric system located entirely within Texas. Because of the intrastate status of their operations, the primary regulatory authority for the HL&P Division and ERCOT is the Texas Commission, although the Federal Energy Regulatory Commission exercises limited authority.

[3] *See Houston Industries, supra* note 1.

[4] Unregco will provide these services through one or more subsidiary REPs. Applicants state that the REPs will not be electric utility companies for purposes of the Act because they will not own or operate physical facilities used for the generation, transmission or distribution of electric energy for sale.

As noted below, REI plans to spin off Unregco. Once the spin-off is completed, Unregco will cease to be an affiliate of REI or Regco for purposes of the Act. Unregco will nonetheless continue to be deemed to be an affiliate of Regco for certain purposes under the Texas Act. Under the statute, REPs such as Unregco that are affiliated with an incumbent utility will be required to sell electricity to residential and small commercial customers within the utility's service territory at a specific price, referred to in the Texas law as the ''price to beat.'' Electric services provided to large commercial and industrial customers may be provided at any negotiated price. In contrast, new REPs may sell electricity to REI's former retail and small commercial customers at any price.

turn, will contribute the assets to a Texas limited partnership, Texas Genco LP. Texas Genco LP will be an electric utility company within the meaning of the Act. Applicants state that Texas Genco Holdings will be a Texas holding company that will qualify for exemption under section 3(a)(1) of the Act.[5]

The final steps in the Business Separation Plan relate to the determination and recovery of stranded costs associated with the Texas Genco assets. The creation of a minority public interest in Texas Genco LP will permit the use of the ''partial stock valuation method'' under the Texas Act for purposes of determining the stranded costs associated with REI's regulated generation assets. Therefore, on or before June 30, 2002, Regco expects to conduct an IPO of approximately 20% of the common stock of Texas Genco Holdings, the holding company for the Texas Genco assets or to distribute the stock to Regco's shareholders. The market value of the common stock will be used to determine the amount of stranded costs that Regco will be allowed to recover if the market value of the Texas Genco assets is less than the book value of the assets.

Unregco will hold an option to purchase all of Regco's remaining shares of capital stock of Texas Genco (the ''Texas Genco Option'').[6] The Texas Genco Option may be exercised between January 10 and January 24, 2004. The exercise price will be determined by a market-based formula based on the formula employed by the Texas Commission for determining stranded costs under the partial stock valuation method referenced above.

The next steps relate to the formation of Regco as a holding company for the regulated operations. Utility Holding LLC, a Delaware limited liability company and a newly formed subsidiary of Regco, will form a special purpose wholly owned subsidiary company, MergerCo, which will merge with and into REI, with REI as the surviving entity. REI common stock will be exchanged for Regco common stock in the merger, and Regco will become the holding company for Utility Holding LLC, REI and its subsidiaries.

REI then plans to convert to a Texas limited liability company, Reliant Energy, LLC (''REI LLC'' or the ''T&D Utility''). The T&D Utility will retain REI's existing transmission and distribution businesses, which will remain subject to traditional utility rate regulation.

REI LLC plans to distribute the stock of all its subsidiaries to Regco, including the stock of GasCo, Texas Genco Holdings and certain financing and other subsidiaries.[7] As noted previously, Regco will effect a tax-free distribution to its shareholders of its remaining ownership interest in Unregco (approximately 80%). As a result of the distribution, Unregco will become a separate, publicly traded corporation.

2. The GasCo Separation

The second stage of the restructuring entails the reorganization of GasCo into three separate corporations (the ''GasCo Separation''). Upon receipt of necessary state approvals, GasCo plans to form two new subsidiary companies, Arkla, Inc. and Minnegasco, Inc., and to contribute to them the Arkla and Minnegasco assets respectively. GasCo will then dividend the stock of Arkla, Inc. and Minnegasco, Inc. to Utility Holding LLC. GasCo, which will be renamed Entex, Inc. and reincorporated in Texas, will own the Entex assets as well as, through subsidiary companies, the natural gas pipelines and gathering business. Applicants state that upon completion of the GasCo Separation, Regco and each of its material utility subsidiaries will qualify for exemption under section 3(a)(1) of the Act.

Regco will not qualify for an intrastate exemption immediately after Electric Restructuring. Pending the GasCo Separation, Regco will not fully satisfy the standards for exemption under section 3(a)(1) of the Act, as interpreted in Commission precedent, because GasCo, a material subsidiary with significant out-of-state operations, will not be ''predominantly intrastate in character'' and carry on its business ''substantially in a single state.'' Upon completion of the GasCo Separation, however, Applicants anticipate that Regco and each of its material utility subsidiaries will be incorporated in Texas and will be ''predominately intrastate in character and carry on their business substantially'' in Texas.

The Texas Act requires that the Electric Restructuring (the separation of REI's regulated electric utility operations into the T&D Utility and Texas Genco) must be completed by January 1, 2002. Accordingly, to enable them to comply with the Texas Act pending the completion of the GasCo Separation, Applicants request an initial order approving Regco's acquisition of the Intermediate Holding Companies, the T&D Utility, Texas Genco, L.P. and GasCo; reserving jurisdiction over the acquisition of the to-be-formed gas utility subsidiaries, Entex, Inc., Arkla, Inc. and Minnegasco, Inc.; granting Texas Genco Holdings and GP LLC an exemption under section 3(a)(1); and granting Regco an exemption under section 3(a)(1) conditioned upon complete compliance with the requirements for exemption upon completion of the Restructuring within two years of the acquisition by Regco of the Intermediate Holding Companies, the T&D Utility, Texas Genco L.P. and GasCo.

Progress Energy, Inc., et al. [70–9989]

Progress Energy, Inc. (''Progress Energy''), a registered holding company, Carolina Power & Light Company (''CP&L''), Progress Energy's public utility subsidiary company, Rowan County Power, LLC (''Rowan''), a wholly owned exempt wholesale generator (''EWG'') subsidiary of CP&L, Progress Ventures, Inc. (''Progress Ventures''), a direct intermediate holding company subsidiary of Progress Energy, and Progress Genco Ventures, LLC (''Genco Ventures''), an indirect intermediate holding company subsidiary of Progress Energy, each located at 411 Fayetteville Street Mall, Raleigh, North Carolina 27602, (collectively, ''Applicants''), have filed a declaration under section 12(d) of the Act and rules 43, 44, 53, and 54 under the Act.

Applicants seek authority for CP&L to transfer its interests in certain electric generation assets and a related generation facility site located in Rowan County, North Carolina (''Rowan Assets'') to Rowan. The proposed transfer is a component of a larger

[5] Applicants state that the limited liability companies, GP LLC and LP LLC, are conduit entities that will exist solely to minimize certain Texas franchise tax liability. LP LLC, a Delaware limited liability company, will acquire a 99% limited partnership interest with no voting rights in Texas Genco LP. Applicants state that, because LP LLC will not acquire 10% or more of the voting securities of Texas Genco LP, LP LLC will not be a holding company for purposes of the Act. GP LLC, a Texas limited liability company, will be a holding company because it will acquire the 1% general partnership interest in Texas Genco LP. Applicants state that GP LLC will qualify for exemption under section 3(a)(1) of the Act.

[6] The retained equity interest will be at least 80%. The Texas Genco Option agreement provides that if Unregco purchases the Texas Genco shares, it must also purchase all notes and other receivables from Texas Genco then held by Regco at their principal amounts plus accrued interest.

[7] The distribution of the stock of REI's subsidiaries, including GasCo and Texas Genco Holdings, will be currently taxable under Texas law. To minimize tax inefficiencies, Regco will hold its utility interests through Utility Holding LLC. Because Utility Holding LLC will be a Delaware company, it will not qualify for exemption under section 3(a)(1) of the Act. Applications request the Commission to ''look through'' Utility Holding LLC for purposes of analysis under section 3(a)(1). *Compare National Grid Group plc,* Holding Co. Act Release No. 27154 (Mar. 15, 2000) (Commission disregarded intermediate holding companies for purposes of section 11(b)(2) analysis).

reorganization of Progress Energy's wholesale operations. The Rowan Assets consist of a 480 megawatt gas-fired combustion turbine generation facility (''Rowan Facility''); associated electric interconnection equipment, fuel storage and handling facilities, and other facilities and equipment necessary for the generation of electricity and conducting related activities that are consistent with being an EWG, as that term is defined in section 32 of the Act. The Rowan Assets also include the Rowan Facility site. Applicants state that the purpose of this transaction is to permit Progress Energy to focus on developing and expanding a portfolio of wholesale generating assets in the Southeast.

Rowan, an EWG and a North Carolina limited liability company, is a wholly owned subsidiary of CP&L that has been organized principally for the purpose of constructing, owning, and selling power from an electric generation facility located in Rowan County, North Carolina. Applicants propose that, as part of this reorganization, Progress Ventures will acquire from CP&L all of Rowan's limited liability company interests, and Progress Ventures will contribute the Rowan interests to Genco Ventures.

CP&L proposes to transfer the Rowan Assets to Rowan at net book cost, subject to a possible adjustment by the North Carolina Utilities Commission (''NCUC''), in the event the NCUC determines that the market value of the Rowan Assets at transfer exceed the net book cost. As of September 30, 2001, the Rowan Assets had a net book cost of approximately $180 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28079 Filed 11–7–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25252; 812–12456]

Heritage Capital Appreciation Trust, *et al.*; Notice of Application

November 2, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') exempting applicants from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants request an order to permit them to enter into an materially amend subadvisory agreements without shareholder approval.

Applicants: Heritage Capital Appreciation Trust (''Capital Appreciation Trust''), Heritage Cash Trust (''Cash Trust''), Heritage Income Trust (''Income Trust''), Heritage Growth and Income Trust (''Growth and Income Trust''), Heritage Series Trust (''Series Trust,'' and together with Capital Appreciation Trust, Cash Trust, Income Trust, and Growth and Income Trust, the ''Trusts''), Heritage Asset Management, Inc. (''Heritage'') and Eagle Asset Management, Inc. (''Eagle,'' and together with Heritage, the ''Managers'').

Filing Dates: The application was filed on March 5, 2001 and amended on October 5, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 880 Carillon Parkway, St. Petersburg, FL 33716.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. Each Trust is organized as a series investment company an doffers shares of one or more series (each a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies and restrictions. [1] Each Manager serves as the investment adviser to one of the Funds and is registered under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Trusts, on behalf of each Fund, have entered into separate investment advisory agreements with the Managers (''Advisory Agreements''), pursuant to which each Manager serves as investment manager to the respective Fund. Each Advisory Agreement has been approved either by the initial shareholder of a Fund or by a Fund's public shareholders and by a majority of each Trust's board of trustees (each, the ''Board,'' and collectively, the ''Boards''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''). Under the terms of the Advisory Agreements, the Manager provides each Fund with investment research, advice and supervision while delegating the day-to-day portfolio management for each Fund to one or more subadvisers (''Subadvisers'') pursuant to separate investment subadvisory agreements (''Subadvisory Agreements''). [2] Each Subadviser is an investment adviser registered under the Advisers Act. The Manager selects each Subadviser, subject to approval by the respective Board. For the investment management services they provide to the Funds, the Managers receive the fee specified in the Advisory Agreement for each Fund, payable monthly based on average daily net assets, at an annual rate based on the Fund's average net assets. The fees of the Subadvisers, at rates negotiated between the Subadvisers and a Manager, are paid by the Managers out of the fees

[1] Applicants also request relief with respect to (a) any other Fund organized in the future, and (b) any other open-end management investment company or series thereof advised by a Manager or a person controlling, controlled by or under common control with a Manager (''Future Funds'', and together with the Funds, the ''Funds''), provided that such Future Fund operates in substantially the same manner as the Funds with respect to a Manager's responsibility to select, evaluate and supervise Subadvisers (as defined below) and complies with the terms and conditions of the requested order. Each existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of its Subadviser, the name of the Manager will precede the name of the Subadviser.

[2] Each Fund that employes a Subadviser is referred to as a ''Subadvised Fund.''

paid by Subadvised Funds to the Managers.

3. Each Manager establishes an investment program for each Subadvised Fund and supervises and evaluates the Subadvisers who make the day-to-day investment decisions for the respective Subadvised Funds. The Manager also is responsible for recommending whether to employ, terminate or replace a particular Subadviser. The Manager recommends the selection of a Subadviser based on a number of factors, including, whether the Subadviser has displayed discipline and thoroughness in pursuit of its stated investment objectives, has maintained consistently above-average performance, and has demonstrated a high level of service and responsibility to clients.

4. Applicants request relief to permit each Manager, subject to approval by the applicable Board, to enter into and materially amend Subadvisory Agreements without seeking shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of either Trust or the Manager, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. The Subadvised Funds' investment advisory arrangements are different from those of traditional investment companies. Applicants assert that the investors are relying on the applicable Manager's experience to select one or more Subadvisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the investors, the role of Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the applicable Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested by the application, the operation of the Fund in the manner described in the application will be approved by vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus with respect to each Fund will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee Subadvisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Subadviser, the applicable Manager will furnish shareholders all information about the new Subadviser that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Subadviser. To meet this condition, the Managers will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934, as amended, within 90 days of the hiring of any new Subadviser.

4. A Manager will not enter into a Subadvisory Agreement with an Affiliated Sub-adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, a majority of each Fund's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes of the Fund, that any such change of Subadviser is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

7. A Manager will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers; (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers in those cases where a Fund has more than one Subadviser; (d) monitor and evaluate the investment performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objectives, policies, and restrictions.

8. No trustee or officer of a Fund or director or officer of the Managers will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for ownership of: (a) an interest in the Manager or any entity that controls, is controlled by or is under common control with the Manager; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28078 Filed 11–7–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 12, 2001: A closed meeting will be held on Tuesday, November 13, 2001, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, November 13, 2001, will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; formal orders; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 6, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–28156 Filed 11–6–01; 11:23 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

2DoTrade, Inc.; Order of Suspension of Trading

November 6, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 2DoTrade, Inc. (''2DoTrade'') because of questions regarding the accuracy of assertions by 2DoTrade and its officers, in press releases concerning, among other things: (1) The Company's claims about testing and the expected distribution of a supposed anti-bacterial compound as a disinfectant for anthrax; (2) the existence and viability of contracts entered into by the company; (3) the status of the company's business operations and prospects; and (4) the identity and backgrounds of the persons in control of the operations and management of the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, November 6, 2001 through 11:59 p.m. EST, on November 19, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28155 Filed 11–6–01; 1:45 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45010; File No. SR–CHX–2001–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc.; Extending the Pilot Relating to Trading of Nasdaq/National Market Securities on the Exchange

November 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act (''Act'' or ''Exchange Act''),[1] and Rule 19–4 thereunder,[2] notice is hereby given that on October 30, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/National Market (''Nasdaq/NM'') securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The pilot program currently is due to expire on November 1, 2001. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2002. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the CHX included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amends Article XX, Rule 37 and Article Exchange Exchange XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules. The pilot program currently is due to expire on November 1, 2001; the Exchange proposes that the amendments remain in effect on a pilot basis through November 1, 2002.

On May 4, 1987, the commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[6] Among other things, these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6)

[5] The Exchange has asked the Commission to waive the 5-day pre-filing requirement and the 30-day operative delay to allow the proposal to be effective upon filing with the Commission. The Commission has agreed to do both. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also,* Securities Exchange Act Release Nos. 28146(June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible

Continued

rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[7]

On January 3, 1997, the Commission approved,[8] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1[9] (The ''NBBO''). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April, 1997. Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[10] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[11] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[12] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[13] On June 30, 1999, Commission approved the pilot for an additional seven-month period, until January 31, 2000.[14] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[15] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[16] On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.[17] In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the exchange now requests another extension of the current pilot program, through November 1, 2002. The Exchange is not requesting approval of any changes to the pilot program in this submission.

Under the pilot program, specialists must continue to accept agency[18] market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place. This threshold order acceptance requirement is referred to as the ''auto acceptance threshold.'' Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that recently were approved by the Commission.[19]

The pilot program requires the specialist to set the MAX auto-execution threshold at 300 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.[20]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, ''oversized'' orders, *i.e.,* orders that are of a size greater than the auto acceptance threshold of 1000 shares (as designated by the specialist), are not subject to the foregoing

securities to 500), 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[7] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[8] *See* Securities Exchange Act Release No. 38119, 62 FR 1788 (January 13, 1997).

[9] 17 CFR 240.11Ac1–1.

[10] *See* Securities Exchange Act Release No. 39512, 62 FR 1517 (January 9, 1998).

[11] *See* Securities Exchange Act Release No. 39823, 63 FR 17246 (April 8, 1998).

[12] *See* Securities Exchange Act Release No. 40150, 63 FR 36983 (July 8, 1998).

[13] *See* Securities Exchange Act Release No. 40868, 64 FR1845 (January 12, 1999).

[14] *See* Securities Exchange Act Release No. 41586, 64 FR 36938 (July 8, 1999).

[15] *See* Securities Exchange Act Release No. 42372, 65 FR 6425 (February 9, 2000).

[16] *See* Securities Exchange Act Release No. 42740, 65 FR 26649 (May 8, 2000).

[17] *See* Securities Exchange Act Release No. 43565, 65 FR 71166 (November 29, 2000).

[18] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[19] *See* Securities Exchange Act Release No. 44778, 66 FR 48074 (September 17, 2001).

[20] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with SEC Rule 11Ac1–4 on or prior to February 24, 1997 and 1000 shares for other issues.

requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[21] The CHX believes the proposal is consistent with section 6(b)(5) of the Act [22] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.[23] Because the Exchange has requested that the Commission accelerate the operative date, and the Commission has approved acceleration of the operative date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

As noted above, the Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately through November 1, 2002 because such designation is consistent with the protection of investors and the public interest. Specifically, acceleration of the operative date will allow the pilot that permits trading of Nasdaq/NM securities on the CHX to continue uninterrupted. Further, the Commission notes that the Exchange is not changing any portion of its current pilot with the exception of extending the pilot for an additional year. For these reasons the Commission finds good cause to designate that the proposal is operative immediately through November 1, 2002.[26]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–22 and should be submitted by November 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28081 Filed 11–7–01; 8:45 am]

BILLING CODE 8010–01–M

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b-4(f)(6).

[26] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45011; File No. SR–NASD–2001–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Manning Pilot for Limit Order Protection on the OTC Bulletin Board

November 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. ''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 29b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to amend NASD Rule 6541 which, for a pilot period ending February 8, 2002, prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board (''OTCBB'') securities. Portions of NASD Rule 6541 were previously amended for a three-month pilot period running from August 1, 2001, to November 1, 2001.[4] The amendment effected by this filing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

revises the rule text of the three-month pilot.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and requests that the Commission waive both the five-day notice and the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii).[5] If such waiver is granted by the Commission, the rule change will be effective on November 1, 2001, and will remain in effect for a pilot period ending on January 14, 2002, the date when a similar pilot rule relating to Nasdaq securities will expire.

The text of the proposed rule change is provided below. New language is in italics; deletions are in brackets.

* * * * *

6541. Limit Order Protection

(a) Members shall be prohibited from ''trading ahead'' of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.

(b) Members may [not] avoid [such] *the* obligation specified in paragraph (a) through the provision of price improvement[, unless:]. *If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (½) of the current inside spread.*

[(1) for customer limit orders priced at or inside the current inside spread, the price improvement is for a minimum of the lesser of $.01 or one-half (½) of the current inside spread; or]

[(2) for customer limit orders priced outside the current inside spread by $.01 or less, the market maker executes the incoming order at or better than the inside bid (for held buy orders) or offer (for held sell orders).]

[(3) for customer limit orders priced more than $.01 outside the inside spread, no obligation is imposed under subsection (a) above.]

For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security. (c)–(e) No Change.

* * * * *

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, applies the basic customer limit order protection principles that presently apply to Nasdaq securities to designated securities that are traded on the OTCBB.[6] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from ''trading ahead'' of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the ''Manning Rule''). In *Manning*, the NASD found and the SEC affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more favorable than the customer order.[7] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001 and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[8] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[9] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current inside spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market maker seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541(b) adopted by SR–NASD–2001–39 has been effective for a three-month pilot period that ends on November 1, 2001.

Nasdaq is amending NASD Rule 6541 (b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread. Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. However, Nasdaq is also eliminating the provision of the pilot that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order without filing the limit order would apply to all limit orders in OTCBB securities covered by

[6] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

[7] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988) (''*Manning*'').

[8] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[9] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread would remain the lesser of $0.01 or one-half of the current inside spread.

Nasdaq proposes to make this change because the degree of price improvement required under both the original rule and SR–NASD–2001–39 is quite large in comparison to the share price of many OTCBB securities. In contrast to Nasdaq securities, many OTCBB securities trade at prices of a few cents or less and may be quoted out to four decimal places.[10] Accordingly, OTCBB market makers may be required to fill limit orders at prices that are quite divergent, in percentage terms, from the price of the order that was traded ahead. An example will illustrate the concern addressed by this rule change:

Market is $0.0165 to $0.0167.

MM receives and holds customer's limit order to buy priced at $0.0065.

MM receives a sell order priced at $0.0164 and immediately executes that order on a proprietary basis.

Under the current pilot, since MM held a limit order to buy priced within $0.01 of the inside spread and bought on a proprietary basis at a price less than the inside bid, MM would be required to fill the customer's limit order. In this example, however, the price of the proprietary trade is over 150% higher than the price of the limit order that MM must fill. Thus, the operation of the rule may significantly affect the profitability of market making in the low-priced and thinly traded securities that are traded on the OTCBB. Under the proposed rule change, MM would be required to fill the limit order only if its proprietary trade was at or below the price of the limit order.

Nasdaq believes that the proposed rule change draws an appropriate balance between providing effective limit order protection for customers who aggressively seek to participate in trading at the inside market while reducing the incidence of forced trading losses to market makers who, in meeting their firm quote and best execution obligations to other market participants, trade near customer limit orders priced outside the spread. In doing so, Nasdaq believes that the proposed rule change will help to promote the liquidity of the OTCBB by encouraging greater market maker participation in the market. Nasdaq represents that it and NASD Regulation will closely monitor the protection of customer limit orders and analyze and evaluate trading activity to determine if future changes to price improvement standard of NASD Rule 6541 are warranted.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[11] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative on November 1, 2001. The Commission finds that granting this request is consistent with the protection of investors and the public interest, as price improvement standards under NASD Rule 6541 will remain in effect on an uninterrupted basis.[13] The Commission finds, moreover, that it is consistent with the protection of investors and the public interest to allow Nasdaq to eliminate NASD Rule 6541(b)(3) as of November 1, 2001, as this provision withholds limit order protection from customer limit orders in OTCBB securities that are priced more than $0.01 outside the current inside spread.

Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has requested that the Commission waive this five-day period. For the same reasons that the Commission has determined to waive the 30-day pre-operative period, the Commission also waives the five-day notice period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[10] In the draft notice provided to the Commission, Nasdaq incorrectly stated that OTCBB securities could be quoted to five decimal places. Telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and Michael Gaw, Special Counsel, Commission, on November 1, 2001.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–78 and should be submitted by November 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28082 Filed 11–7–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45012; File No. SR–NYSE–2001–29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Eliminating the Exchange's Discretion To Exempt Relief Specialists From Registration and Approval

November 2, 2001.

On August 21, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Exchange's discretion to exempt relief specialists from registration and approval requirements. Specifically, the proposed rule change would amend NYSE Rule 103 (Registration of Specialists) to delete the provision that grants the Exchange the discretion to exempt relief specialists from registration and approval requirements.

According to the NYSE, the provision in NYSE Rule 103 is unnecessary because NYSE Rule 104.15 requires regular specialists to either (1) be associated with other members also registered as regular specialists in the same stocks and arrange for at least one member of the group to be in attendance during the hours when the Exchange is open for business, or (2) arrange for the registration by at least one other member as relief specialist, who would always be available, in the regular specialist's absence, to take over the book and to service the market, so that there would be no interruption of the continuity of service during the hours when the Exchange is open for business.[3]

The proposed rule change was published for comment in the **Federal Register** on September 27, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act.[6] The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of an exchange promote just and equitable principles of trade and in general to protect investors and the public interest. Specifically, the Commission believes that the proposal should ensure that only qualified persons act as specialists because it requires all specialists to comply with registration and approval requirements. In addition, the provisions of NYSE Rule 104.15 will ensure that specialist firms always have a relief specialist who meets the registration and approval requirements of NYSE Rule 103 available to take over the book if necessary at any time. Accordingly, the provisions of NYSE Rule 104.15 make the exemption provided for in NYSE Rule 103 unnecessary.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2001–29) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28080 Filed 11–7–01; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Extension of Deadline for the Submission of Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act, Title I of the Trade and Development Act of 2000 via Electronic Mail or Facsimile

ACTION: Extension of deadline for submission of comments via E-mail or Fax.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is extending the deadline for the submission of public comments via fax or e-mail for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (''AGOA'') from November 6, 2001, to November 14, 2001.

DATES: The deadline for comments is November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Office of African Affairs, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC 20508. Telephone (202) 395–9514.

SUPPLEMENTARY INFORMATION: On October 17, 2001, the Subcommittee published in the **Federal Register** an extension of the deadline for the submission of written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of AGOA (''**Federal Register** notice''). *See,* 66 FR 52825. According to the **Federal Register** notice, the deadline for the submission of all written comments was extended to November 6, 2001.

Since the week prior to the publication of the **Federal Register** notice, all mail delivery to the Office of the United States Trade Representative has been halted due to concerns of possible biological contamination, and it is unclear when deliveries will resume. Consequently, the Subcommittee is hereby extending the deadline for the submission of comments once again until not later than November 14, 2001, in order to permit Parties additional time to submit their comments via electronic mail (''e-mail'') or facsimile (''fax''). Even if a Party has sent its comments via the United States Postal Service or any other delivery service, USTR recommends assuming that they have

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between Melvin Hanton, Senior Special Counsel, NYSE, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on October 29, 2001.

[4] *See* Securities Exchange Act Release No. 44825 (September 20, 2001), 66 FR 49442.

[5] In approving this proposal rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

not been received by USTR and re-submitting the comments via e-mail or fax.

Parties should refer to the original request for comments, published in the **Federal Register** on September 25, 2001, for an explanation of AGOA, the AGOA eligibility requirements, and a list of current beneficiary and non-beneficiary countries. *See,* 66 FR 49059. Submissions via e-mail should be sent to FR0003@ustr.gov; submissions via fax should be sent to (202) 395–4505.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–28223 Filed 11–6–01; 2:23 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34047 (Sub–No. 1)]

Kansas & Oklahoma Railroad, Inc.-Trackage Rights Exemption-Central Kansas Railway, L.L.C.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34047 [1] to permit the trackage rights to expire, as they relate to the operations extending near Garden Plains and Wichita, on the date that CKR certifies the completion of a line-relocation project near Kingman, KS, and a line-rehabilitation project between Wichita and Kingman, via Conway Springs, KS.[2]

DATES: This exemption is effective on November 8, 2001. Petitions to reopen must be filed by November 28, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34047 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: D 2 D Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. (Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.)

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: November 1, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27952 Filed 11–7–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 25, 2001, K&O filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by Central Kansas Railway, L.L.C. (CKR) to grant temporary overhead trackage rights to K&O over CKR track located between CKR milepost 19.5, near Garden Plain, KS, and CKR milepost 3.5, at Wichita, KS, a distance of 16 miles. *See Kansas & Oklahoma Railroad, Inc.—Trackage Rights Exemption—Central Kansas Railway, L.L.C.,* STB Finance Docket No. 34047 (STB served June 12, 2001).

[2] K&O has indicated that it currently expects to have the relocation and rehabilitation projects completed and to cease operating over CKR's line some time in October 2001.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0605]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine applicants' eligibility for accreditation as claims agents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 7, 2002.

ADDRESSES: Submit written comments on the collection of information to Martin J. Sendek (022C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *martin.sendek@mail.va.gov.* Please refer to ''OMB Control No. 2900–0605'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Martin J. Sendek at (202) 273–6325 or FAX (202) 273–6404.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OGC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accreditation as a Claims Agent, VA Form 21a.

OMB Control Number: 2900–0605.

Type of Review: Extension of a currently approved collection.

Abstract: Applicants for accreditation as claims agents to represent benefit claimants before the VA are required to file VA Form 21a with VA Office of General Counsel to establish initial eligibility for accreditation. The information requested includes basic identifying information, information concerning past representation, military service, employment, criminal activity and mental health and is necessary to establish that statutory and regulatory eligibility requirement; e.g., good character and reputation are met. The form further ensures that VA has the information necessary to make decisions concerning an applicant's potential eligibility for accreditation as a claims agent.

Affected Public: Individuals and households.

Estimated Annual Burden: 15 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20.

Dated: October 19, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–28043 Filed 11–7–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0036]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0036.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Disappearance, VA Form 21–1775.

OMB Control Number: 2900–0036.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., section 108, requires a formal presumption of death when a veteran has been missing for seven years. VA Form 21–1775 is used to gather the necessary information for proper decisions regarding the unexplained absence of an individual. Without this information, it would not be possible for VA to authorize death benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 24, 2001, at pages 44668–44669.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,500 hours.

Estimated Average Burden Per Respondent: 2 hours, 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0036'' in any correspondence.

Dated: October 24, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–28044 Filed 11–7–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0159]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0159.''

SUPPLEMENTARY INFORMATION:

Title: Application for Payment of Matured Endowment, VA Form 29–5767.

OMB Control Number: 2900–0159.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to notify the insured that his/her endowment policy has matured and to solicit the disposition of the proceeds of the policy. The information collected is required by law and is used by VA to process the insured's request.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 24, 2001, at page 44668.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,867 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0159'' in any correspondence.

Dated: October 24, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–28045 Filed 11–7–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0418]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 809.106–1 and 809.504(d) and VAAR Clause 852.209–70.

OMB Control Number: 2900–0418.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VAAR section 809.106–1 requires the contracting officer to ask a firm being considered for award of a contract for bakery, dairy, or ice cream products or for laundry or dry cleaning services whether or not the firm's plant has recently been inspected by another Federal agency and, if so, which agency. The information is used by the contracting officer to determine whether or not a separate inspection of the firm's plant must be conducted by VA prior to contract award. Paragraph (d) of VAAR section 809.504 and VAAR clause 852.209–70 require offerors on solicitations for management support and consulting services to advise, as part of the firm's offer, whether or not award of the contract to the firm might involve a conflict of interest and, if so, to disclose all relevant facts regarding the conflict. The information is used by the contracting officer to determine whether or not to award a contract to the firm or, if a contract is to be awarded despite a potential conflict, whether or not additional contract terms and conditions are necessary to mitigate the conflict.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001, at pages 42708 and 42709.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden:

a. VAAR section 809.106–1—30 hours.

b. Paragraph (d) of VAAR section 809.504 and VAAR clause 852.209–7—1,000 hours.

Estimated Average Burden Per Respondent:

a. VAAR section 809.106–1—3 minutes.

b. Paragraph (d) of VAAR section 809.504 and VAAR clause 852.209–7—60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR section 809.106–1—600.

b. Paragraph (d) of VAAR section 809.504 and VAAR clause 852.209–7—1,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

Dated: October 24, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–28046 Filed 11–7–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Agency Information Collection Activities Under OMB Review.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0261.''

SUPPLEMENTARY INFORMATION:

Title: Application for Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C), VA Form 24–5281.

OMB Control Number: 2900–0261.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 24–5281 is used by veterans and service persons to request a refund of their contributions to the Post-Vietnam Veterans Education Program. If a participant disenrolls from the program prior to discharge or release from active duty, such contributions will be refunded on the date of the participant's discharge or release from active duty or within 60 days of receipt of notice by the Secretary of Veterans Affairs of the participant's discharge or disenrollment, except that refunds may be made earlier in instances of hardship or other good reasons as prescribed in regulations issued jointly by the Secretary and the Secretary of Defense. If the participant disenrolls from the program after discharge or release from active duty, the contributions shall be refunded within 60 days of receipt of the participant's VA Form 24–5281.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 23, 2001, at pages 44440–44441.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0261'' in any correspondence.

Dated: October 25, 2001.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–28047 Filed 11–7–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0500.''

SUPPLEMENTARY INFORMATION:

Title: Status of Dependents Questionnaire, VA Form 21–0538.

OMB Control Number: 2900–0500.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to request certification of the status of dependents for whom additional compensation is being paid. Without the information, continued entitlement to the benefits for dependents could not be determined.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 24, 2001, at pages 44667 and 44668.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,083 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 84,500.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

Dated: October 26, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–28048 Filed 11–7–01; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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To authorize the Government of the Czech Republic to establish a memorial to honor Tomas G. Masaryk in the District of Columbia. (Nov. 5, 2001; 115 Stat. 410)

H.R. 1668/P.L. 107–62
To authorize the Adams Memorial Foundation to establish a commemorative work on Federal land in the District of Columbia and its environs to honor former President John Adams and his legacy. (Nov. 5, 2001; 115 Stat. 411)

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H.R. 182/P.L. 107–65
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